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THE GROWTH OF
INDIAN CONSTITUTION
AND
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THE GROWTH OF INDIAN CONSTITUTION AND ADMINISTRATION

BY

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Economics of Agricultural Progress

Third Edition

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PREFACE TO THE THIRD EDITION

In rewriting the Third Edition I have abridged the earlier historical portion and devoted more space to the actual working of the Reforms of 1919. The Simon Commission and the Committee of the Indian Legislature are at present examining the operation of the Government of India Act, 1919, and their Reports will be soon presented to Parliament and the responsibility of implementing them has fallen upon the Labour Government. This is a fortunate coincidence. I have focussed in a few pages the demands of the Liberal School of Indian politicians.

Every effort has been made to secure accuracy, I hope the new Edition is in every respect an improvement upon the old one. I have made extensive use of recent literature, official and non-official, upon the subject of Indian Constitutional Reform and I have great pleasure in acknowledging my indebtedness to it.

WILLINGTON COLLEGE,
SANGLI.
30th July, 1927.

B. G. S.

EXTRACT FROM PREFACE TO FIRST EDITION

Three years ago I wrote a book named "*The Reformed Constitution of British India*" giving a full account of the main changes brought about by the Government of India Act of 1919 in the Indian Constitution. I did not dwell in that book upon the *growth* of the Indian Constitution. While I was gathering material for such a historical treatment of the subject, the course of study in Indian History and Administration prescribed for the Intermediate Examination of the Bombay University was changed, greater emphasis being laid upon Constitution and Administration than upon History. The present book is an attempt to compress within reasonable limits that modicum of knowledge of History, Constitution, and Administration which every College-student ought to possess. The College-student of to-day is the citizen of to-morrow and I can conceive of no greater obligation upon him than an endeavour to understand the Indian Constitution. That Constitution is undergoing a silent change almost every moment. He ought to understand how the Constitution was shaped by the British Parliament from time to time in the past, for Parliament *alone* can change it in the future. Parliament will no doubt be guided in that task by the use we make of the opportunities afforded by the existing Constitution. I shall feel myself amply rewarded if the present book, by contributing in its humble way to the education of the people, brings about their speedy progress towards full Responsible Government.

WILLINGDON COLLEGE,
SANGLI,
15th June, 1924.

}

B. G. S. . . .

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PART I

THE BEGINNINGS

CHAPTER I

THE EAST INDIA COMPANY (UP TO 1772)

(1) ITS FIRST SETTLEMENTS AND CONQUESTS IN INDIA

Argument.—The period from 1600 in which year the East India Company was incorporated in England by a Charter from Queen Elizabeth to 1858 in which year the Government of India passed from the Company to the Crown, is full of interest to the student of Indian history and administration. He must carefully study the following points in this period: (1) how the Company established and extended possessions in India; (2) The early constitution of the East India Company and how it got its commercial and political privileges through Charters from the Rulers of England; (3) how, under the guidance of the Court of Directors it evolved a system of administration in India; and (4) how, as the result of territorial expansion and failure in administration it increasingly came under the control of Parliament, and finally ceased to exist.

Not less important the subsequent period from 1858 to 1919 in which latter year the first instalment of responsible government was granted to British

India. Here the student should note: (1) how the bureaucratic form of government, in spite of many advantages, led to discontent among the people; (2) how the discontent was sought to be removed by measures of decentralization and the establishment of popular councils, which finally (3) paved the way for the first step towards Responsible Government.

First Settlements and Early Struggles.—I shall first of all describe how the Company established its settlements in India which in course of time expanded into territorial possessions. As a result of the great maritime activity in the days of Queen Elizabeth, Englishmen went out to trade with distant parts of the world and they tried different forms of settlements in different places. They established 'plantations' and 'colonies' in America, for they had gone there with a view to stay permanently; in India and the Far East, however, they put up "factories" only which were well suited for trade and commerce. Such factories were early established at Surat, Madras, Masalipatam, and Hooghly and were for years confined to the coast line of India. But the merchant-adventurers of the East India Company soon came in conflict with other European merchants who were earlier in the field, *e. g.*, the Portuguese and the Dutch. The former were very strong in the Persian Gulf and on the West Coast of India, and the latter had established prosperous trading centres in Java, Sumatra, and the "Spice Islands" generally. Here the rivalry between the Dutch and the English was so keen that it culminated in the so-called massacre of Amboyna, (1623) when most of the English merchants were put to death. From that time the Company fixed their

attention more and more upon India. This diversion of the attention of the Company from the Far East to India was important in this sense that it thereby opened to them 'a wider and more Imperial destiny'* in the Indian Continent itself.

In those days commerce with the interior was difficult or impossible for foreigners unless they obtained some sort of 'Firman' or 'Patent' recognising their status and granting them protection and privileges. It was always the ambition of the pioneers of European trade to secure such Firmans from the Emperors at Delhi. In 1615 the British 'Ambassador' Sir Thomas Roe led an embassy to the Court of Jehangir and obtained from him such a Firman. But, though the English necessarily came in contact with the power of the Emperor or the local Nawab, for many years they confined themselves strictly to commercial pursuits. They took a lesson from the fate of the Portuguese and the Dutch merchants who had followed a more aggressive policy, had come in frequent collision with native powers, and as a result had to maintain large and costly establishments for their protection, to the detriment of profitable commerce. Sir Thomas Roe warned his countrymen against this danger. He asked them to confine themselves to commerce. "Let this be received as a rule that if you will profit, seek it at sea, and in quiet trade; for without controversy, it is an error to affect garrisons and land-wars in India."†

Departure from a strictly commercial policy.—In the year 1686, largely under the influence of the two brothers Sir Joshua Child and Sir John Child, whose

* Roberts : 34.

† Quoted in Roberts : page 37.

voice was then decisive in the affairs of the Company, a departure was made from the policy of non-interference with internal affairs. In that year an expedition was led against Chittagong. It failed ludicrously and only served to rouse the wrath of the Emperor Aurangzib, who ordered the wholesale expulsion of the English from their factories at Patna, Kasimbazar, and Masulipatam, and Vizagapatam, and they were only saved by timely submission and by a display of superior naval strength. In 1690 a treaty was made with the Emperor, by which the old privileges were confirmed. Not only were the deserted factories reoccupied, but Job Charnock established a new factory at Calcutta. "The same year, therefore, which witnessed the abasement of the Company before Aurangzib also witnessed the humble foundation of the future capital of India."*

The Anglo-French Struggle in Europe.—But, in spite of this check which the English received, events were happening both in Europe and India at this time, which forced the Company to take an active interest in the affairs of India. It is true that the Portuguese and the Dutch had ceased to cause anxiety to the English; but a more powerful rival appeared in the French East India Company which, under the fostering care of Colbert, soon established factories in India. The ultimate success of the English over the Dutch and the French merchants was due, to no small extent, to the European policy of the French King Louis XIV. He was bent upon destroying the independence of the Dutch Republic. This was exactly what England wanted. For though she sympathised with the Re-

* Roberts . p. 46. *

public and Protestant Holland on political and religious grounds in Europe, Holland was her commercial rival in the East. She, therefore, watched with delight the enfeeblement both of France and Holland, caused by the wars of Louis XIV. As Sir Alfred Lyall points out, this gave great advantage to the naval operations of the English, "who thenceforward, began to draw slowly but continuously to the foremost place in Asiatic conquest and commerce."

Its counterpart in the Karnatak Wars.—Whilst this contest for commercial and colonial supremacy between the French and the English was raging in the West, events were happening in India which rendered adherence to the policy of indifference to local affairs any longer impossible. Aurangzib died in 1707; the Subhadars of the distant Provinces of Bengal and Hyderabad virtually became independent; and above all, there was, in the Deccan, a vigorous rebirth of the Maratha power under the Peshwas.

The Indian counterpart of the Anglo-French struggle in Europe is comprised in the three Karnatic Wars (1744-1763).

It is not proposed to go into the details of these wars, Dupleix arrived in India in 1741, and took up the cause of a claimant to the throne of Arcot; the French took Madras from the English who had espoused the claim of the rival Nawab. The treaty of Aix-la-Chapelle (1748) put an end to this war (the First Karnatic War) in which, on the whole, the French had triumphed over the English. During this war Dupleix is said to have made the 'discovery' that

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* Lyall . page 28.

the irregular hordes maintained by the Indian Princes could be turned into an excellent army if they were drilled, disciplined and led by European Officers. In the Second Karnatic War (1750-54) the succession dispute at Arcot between two Nawabs was complicated by another at Hyderabad between two Nizams. Dupleix succeeded in establishing his own candidates, one as the Nizam of the Deccan, and the other as the Nawab of Karnatic. But his progress was checked by the dramatic emergence of Robert Clive who turned the tide of war in favour of the English. Dupleix was recalled and peace was made with the English in 1754. Thus, though England and France were at peace in Europe, their Companies were fighting in India and the war is therefore called an "unofficial" War. Both sides were equally exhausted and if Mahamad Ally (the English candidate) remained Nawab of the Karnatic, Salabat Jung (the French protégé) was the Nizam at Hyderabad, and thus there was a balance of power between the two European Companies in Southern India. The struggle was resumed at the outbreak of the Seven Years' War in Europe. Lally was severely defeated at Wandewash (1760) and Pondicherry was taken in 1761. The Peace of Paris (1763) though it restored Pondicherry to the French, gave a death-blow to the dreams of the French to establish an Empire in India.

Causes of the French Failure.—It is beyond the scope of this book to discuss the causes of the final failure of the French in India. Sir Alfred Lyall has done a great deal to elucidate this point. He distinguishes between the immediate local causes and the essential underlying causes of this failure. The leadership of men like Clive and Lawrence and the conquest of

Bengal which placed at the disposal of the English the vast resources of that Province belong to the former group. The financially rotten condition of the French East India Company; its close connection with and helpless dependence upon the French Government and the consequent mal-administration of its affairs belong to the latter group. Thus, even supposing that Dupleix, Bussy, and Lally were free from those shortcomings of temperament or character which all acknowledge, and supposing further that they had not committed the tactical blunders attributed to them, it is doubtful if they could have succeeded as against the English. The ultimate cause of the French failure is to be found, to use the words of Lyall, "in the continual sacrifice of colonial and mercantile interests to a disastrous war-policy (of Louis XIV & XV) on the Continent, and above all to the exhaustion of their naval strength which left all transmarine possessions of France defenceless against the overwhelming superiority of England."*

Struggle in Bengal.—It has been pointed out by Lyall that after 1763 the contest for ascendancy in India is not between rival European Companies but between the English Company and the Native Powers. The first half of the struggle was decided on the coast line of Madras in the short period of 20 years (1745-63); the second half began in the interior of Bengal in 1756, extended over the whole of India and occupied a whole century. And curiously enough, Clive is the connecting link between these two periods and theatres of the struggle. As a reward for his services in the Karnatic Wars he was appointed in

1756 the Governor of Madras; but the condition of Bengal became so serious that he had to go to Calcutta. Ali Vardikhan the strong *Nāzim* (or Governor) of Bengal died in 1756 and was succeeded by his son Suraj-Udawala, a youth of barely 20 years of age. He was bent upon driving the English—who, against his orders were fortifying Calcutta—out of Bengal and therefore, took Kasimbazar, marched upon Calcutta and the “Black Hole” tragedy took place on 23rd June. It was for the recovery of Calcutta that Clive and Admiral Watson were sent from Madras. The position of the Company in Bengal was rendered more precarious by the negotiations of Suraj-Udawala with the French, between whom and the English the Seven Years’ War had broken out in Europe. But Clive, by allying himself with Mirjafar who was plotting the overthrow of the *Nāzim*, routed his army in the battle of Plassey, and Mirjafar was made the *Nāzim*. In recognition of these services Clive was made the President of the Council and Governor of Bengal. He was thus enabled to utilise the resources of Bengal against the French in Madras. He sent Col. Forde to the Northern Circars to divert the attention of the French, and Forde took Masulipatam in 1759 April. Col. Forde also defeated the Dutch—the only other European rival of the English in Bengal; Clive after thus establishing securely the power of the Company in Bengal, returned to England in 1760. A comparison of the position of the Company in 1756 with that in 1760 shows the magnitude of the achievement of Clive. He had raised the status of the English from a commercial Company to the supreme power in Bengal, and the accession of the wealth of Bengal also altered the position of the Company in Madras as against the

French. The English got a firm footing inland from which it became easy for them to defeat their European rivals and develop their resources for the fight with the Native Princes. It gave them a position in upper or Continental India as distinguished from lower or Peninsular India. The English secured the richest Province in upper India in point of fertility and manufacture. It was a province eminently suited for maritime people. It was free from such powerful rivals as the Peshwas and Hyder in Western and Southern India respectively.

(2) ITS EARLY CONSTITUTION AND HISTORY

Having described so far how the original factories of the East India Company expanded into territorial possessions it is now time to turn to the development of that Company in England. The Company was formed by a Charter from Queen Elizabeth in 1600 which incorporated "George, Earl of Cumberland and 215 knights, aldermen and burgesses, by the name of the Governor and Company of merchants of London trading with the East Indies".

The points of permanent interest in the development of the Company are (a) the early constitution of the Company; (b) its privileges; (c) its legislative powers.

Constitution.—The merchants who formed the Company were to elect annually one Governor and twenty-four "Committees" for the management of its Voyages, Shipping and Commercial affairs. The "Committees" were individuals, not bodies, and they were the predecessors of the subsequent Court of Directors. In the first Charter there is no reference to the capital of the Company for it was much looser

10 (2) EARLY CONSTITUTION AND HISTORY

in constitution than a modern joint stock company. Each merchant invested his own capital at his own risk in each voyage, and agreed to obey certain 'regulations' for his own protection. This period of 'separate voyages' lasted till 1612. But many merchants began the practice of carrying over their profits from separate ventures and thus subscribed for a series of ventures. This system was called "Investment in the Joint Stock". From this the transition to the pure and simple Joint Stock principle was easy and was made in 1657. The entrance fee was £5; the minimum subscription for a shareholder £100; the holder of £500 stock was to have a vote in the General Court of Proprietors' and of £1,000 was to have the right of being elected as a "Committee" *i. e.* as a Director twenty-four of whom were to form the Court of Directors. Thus the 'Regulated' Company became transformed into a Joint Stock Company with its two organs of a Court of Proprietors (corresponding to the modern general body of shareholders) and the Court of Directors (corresponding to the modern Board of Directors).

The Directors were annually elected by the Proprietors and received a salary of £300. The Chairman and Deputy Chairman got £500. They transacted business through various Committees chosen from among themselves. There were as many as ten such Committees of each of which the Chairman and Deputy Chairman were *ex-officio* members. The names of the Committees indicate the varied business the Company had to attend to in England as well as in India. (1) The Committee of Correspondence, which was the most important, in charge of the correspondence to and from India; (2) the Committee

of Law Suits ; (3) the Committee of Treasury to provide for the payment of dividends, negotiate loans etc ; (4) Committee of Warehouses, mostly dealing with the import of commodities made in India ; (5) the Committee of Accounts ; (6) Committee of Buying attending to the export of articles made in England ; (7) Committee of the House, in charge of the repairs to the India House ; (8) Committee of Shipping ; (9) Committee of Freight, Demurrage etc. on private trade ; and finally (10) a Committee to prevent the growth of the private trade of the servants of the Company

It will be thus seen that the Company had evolved an elaborate organization in England admirably suited to its varied functions.

(b) *Commercial privileges* :—The Company enjoyed the monopoly of trade with the East Indies for the period of 15 years. The concession of such exclusive privileges was necessary at a time when trade with distant and unknown lands was full of risks and dangers. (c) *Legislative powers* :—The ‘General Court’ (which consisted of all those who had invested capital in the Company) was authorised to make laws and inflict punishments, for the good government of the Company and its servants, provided such laws and punishments were reasonable and not contrary to the laws of England.

Such was the type of private association of merchants, incorporated under a Royal Charter and enjoying commercial privileges and legislative powers that was evolved for the extension of trade in the 17th Century. As Lyall points out, “the Charter expressed the delegation of certain Sovereign Powers for distinct purposes ; it amounted from one point of view to a license for private war : and the system has since had

a long and eventful and curious history which has as yet by no means ended." *

The Company under the Stuarts.—James I on the whole was favourably disposed towards the Company; his Charter of 1609 made the Company perpetual and those of 1615 and 1623 authorised it to exercise martial law to maintain discipline among its servants. Charles I, by giving a patent to a rival Company encouraged the class of unauthorised traders with the Indies, known as 'interlopers'. Cromwell, the father of the Navigation Acts and an enemy of the Dutch (who had given asylum to the fugitive Prince Charles), gladly took up the cause of the Company and exacted from the Dutch adequate compensation for the losses suffered by the Company in the Far East.

The transition of the Company from a purely commercial to a political body is seen in the new powers—as those of erecting fortifications, coining money, making of peace and war—conferred by the Charters of Charles II, who also gave to the Company the island of Bombay which from that time became the most important possession of the Company on the Western Coast of India. The transition is also marked by the following famous Resolution which the Company adopted in 1681.

"The increase of our revenues is the subject of our care as much as our trade; it is that must maintain our force when twenty accidents may interrupt our trade; it is that must make us a Nation in India; without that we are but a great number of interlopers, united by His Majesty's Royal Charter, fit only to trade where nobody of power thinks it their interest to prevent us;

* Lyall: p. 15.

and upon this account it is that the wise Dutch, in all their general advices that we have seen, write ten paragraphs concerning their Government, their Civil and Military policy, warfare, and the increase of their revenue, for one paragraph they write concerning trade."*

The Company after the Revolution.—The Revolution marks an important step in the career of the East India Company. As Sir William Hunter points out, it brought the Company face to face with Parliament. The monopoly of the Company was opposed by various parties on different grounds. Some were hostile to it on the old mercantile ground that trade with the East involved a continuous drain of bullion out of the country, and bullion was regarded by this school as wealth *par excellence*; others opposed not so much the trade as the monopoly of it enjoyed by the East India Company. Many enemies of the Company, therefore, formed a rival Company, and having secured the support of the powerful Whig party, petitioned the Crown to grant monopolies to private associations. But all authority had now passed from the Crown to Parliament and the House of Commons, therefore, in 1694, resolved "that *all* subjects of England have equal rights to trade to the East Indies unless prohibited by Act of Parliament." Thus, as Ilbert says, the question whether the trading privileges of the East India Company should be continued was removed from the Council Chamber to Parliament, and the period of control by Act of Parliament over the affairs of the Company began †

An unhealthy competition now arose between the old East India Company and a new Company that was

* Quoted in Ilbert's Historical Introduction.

† Hunter Vol I page 977

‡ Ilbert - Historical Introduction.

14 (2) EARLY CONSTITUTION AND HISTORY

started to take advantage of the new freedom of trade and in 1708 the rival Companies were amalgamated under the new title "The United Company of Merchants of England trading to the East Indies."

The Company had now to be on good terms with the Ministers of the King, and to get extensions of their privileges by often bribing them. A Charter of 1726 empowered the Company to ordain byelaws and rules, provided they were reasonable and not contrary to the laws and statutes of England and they were not to have any force or effect until they had been approved and confirmed by order in writing of the Court of Directors. This Charter also established or reconstituted the Mayor's Courts in Calcutta, Bombay and Madras and expressly introduced the laws of England into the Presidency Towns. Such Charters show how the Company had become a partially sovereign body. As Macaulay says: "It is a mistake to suppose that the East India Company was merely a commercial body till the middle of the 18th Century. Commerce was its object but in order to enable it to pursue that object it had been invested from a very early period with political powers. Its political functions attracted little notice because they were merely auxiliary to commercial functions. Soon, however, they became more important.....Long before 1765 the Company had the reality of political power. In fact it was considered by Lord Clive and Warren Hastings, as a point of policy to have the character of the Company undefined in order that they might treat the Princes in whose name they governed—as realities or non-entities as might be most convenient."*

Factory to Fort, and Fort to the Presidency.—Let

* Speech 1833.

us now turn to the development of the early Factories of the Company in India to Forts and then to Presidencies. The Servants of the Company in a typical 'factory' were the 'Writers', "Factors" "Junior merchants" and "Senior merchants". The writers, who were young cadets receiving only a nominal salary but having the privilege of private trade, became after a period of service 'Factors'. The Factors, in their turn, became 'Junior' and 'Senior' merchants from among whom the members of the Council were chosen.

The life of the merchant-community was centred in the 'Factory'. They led there a corporate life as in a College. The instructions which the Directors now and again sent out to India show what were the special evils against which they wished to guard their young servants. There are frequent exhortations against the evils of duelling, against intemperance, extravagance, and gambling. They also condemned private trade on the part of their servants. Nor did the Directors forget to send out suitable books for the benefit of the young. Thus though they cared first for profits, they were not unmindful of the larger interests of their servants.

It should be noted that in course of time the factories attracted a large heterogeneous population from the surrounding country. Fortifications were built for protection, money began to be coined, justice to be administered, and a native militia entertained. As Lyall points out, in the system thus introduced was contained the germ out of which these scattered trading settlements eventually expanded into territorial dominion. *

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Geographically they fell into three groups: Bombay, Bengal and Madras. Each was called a Presidency as it was governed by a President and Council. The President, also called the Governor, was sent out from England by the Court of Directors. The Council consisted of all the 'senior' merchants in the Presidency. Some lived in the Capital, but others were scattered over the whole presidency in charge of factories. The Governor and Council had great powers—civil and criminal—for the maintenance of discipline among their servants and of peace and order within their jurisdiction.

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Reforms of Clive.—Nothing brings out more clearly the transformation of the Company from a commercial body into a territorial power than the acquisition of *Dewani* by Clive in 1765. Reference has been made to the part he played in overthrowing the power of Siraj-ud-daula of Bengal and his return to England in 1760. On his departure, there ensued, in the words of Sir Alfred Lyall, "the only period of Anglo-Indian history which throws grave and unpardonable discredit on the English name." Government fell in the hands of Holwell and Vansittart who now became the Governor of Bengal. As Mirjafar was not able to pay his stipulated amounts, they entered into a secret treaty with Mir Kasim, who, as the price of his elevation to the throne, presented to the Committee £200,000 out of which Vansittart got £28,000. But Mir Kasim proved a more capable and independent ruler than was expected by the Company and protested against the abuse by the servants of the Company of the trading

(3). TRANSITION TO TERRITORIAL POWER 17

privileges. The whole internal trade was in the hands of these servants. They claimed exemption from the payment of all the internal duties, and under this unfair competition the Indian merchants suffered. Mir Kasim protested but as his complaints proved of no avail, he abolished duties in the case of both English and Indian merchants. As this concession was opposed by Mr. Ellis, a merchant of the Company at Patna, Mir Kasim attacked Patna and imprisoned him. There was now an open rupture between Mir Kasim and the Council and the latter again made Mirjafar the *Nāsim*. Mir Kasim was defeated and he ordered the massacre of the prisoners at Patna and was finally defeated in the battle of Buxar, October 1764. As Mirjafar had died in February of the same year, the Council raised his grandson Nazim-ud-davla—a minor—to the throne and appointed a *Naib Nāsim* to carry on the civil administration. The Company was to be paid £50,000 per month for the maintenance of the army in Bengal.

Such was the condition which Clive was called upon to improve during his third visit to India.

In a letter (30th September 1765) to the Court of Directors that he wrote soon after his arrival in Bengal, Clive refers to the corruption, extravagance and luxury of the servants of the Company as the besetting sins of Government in Bengal. His labours, therefore, to remove them have been rightly compared to the cleansing of the Augean stables. His first reform was to reconstitute the Council at Calcutta. In the place of an unwieldy body of sixteen members scattered over the whole province he substituted, with the sanction of the Court of Directors, a Select Committee of four members. With the help of this Com

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mittee he next proceeded to reorganize the administration of the minor Nawab Nazim-ud-davla. He appointed Mahamad Rezakhan as *Naib Nāzim* and restricted his power by associating with him two Hindu grandees.

Clive then turned his attention to a more ambitious project. It was agreed that the Nawab Vazier should pay to the Mogul Emperor the sum of twenty six lacs of rupees per annum and also cede the districts of Allahabad and Korah. In return for this the Emperor made over to the Company, on 12th August, the *Dewanee* of the three provinces of Bengal, Bihar and Orissa. It was further agreed that the Nawab Vazier was to receive Rs. fifty three lacs out of the revenues of the provinces 'as an adequate allowance for the support of the Nizamat' and the surplus was to be appropriated by the Company itself.

Clive in his letter of 30th September 1765 explained to the Court of Directors that the Dewani was an *employment* conferred upon the Company "the nature of which is the collecting of the all revenues, and defraying of all the expenses of the army, and allowing a sufficient fund for the support of the Nizamat, to remit the remainder to Delhi, or wherever the Emperor shall reside or direct". As a matter of fact the claims of the Emperor and the Nawab Vazier were compounded for by the annual payments of Rs. twenty six and fifty three lacs respectively and the Company obtained all the surplus revenues.

The new rights acquired by Clive were so important that he was anxious to have them in the name of the English Government and not of a mercantile Company. As he wrote in a private letter to Pitt: "So

large a Sovereignty may possibly be an object too extensive for a mercantile Company, and it is to be feared they are not of themselves able, without the nation's assistance, to maintain so wide a dominion; I have therefore presumed, Sir, to represent this matter to you, and submit it to your consideration, whether the execution of a design, that may hereafter be still carried to greater lengths, be worthy of the Government's taking it into hand. I flatter myself I have made it pretty clear to you, that there will be little or no difficulty in obtaining absolute possession of these rich kingdoms and that with the Mogul's own consent, on condition of paying him less than a fifth of the revenues thereof."

Pitt let go the offer, nor were the Directors more appreciative of the advantages that the *Diwani* conferred upon the Company. They warned the Company not to undertake *directly* the work of collecting revenue or administering justice, for which, they said, Englishmen were unfit. They wrote in their Despatch of 17 May, 1766, "we conceive the office of the *Dewan* should be exercised only in *superintending* the collections and disposal of revenues, which though vested in the Company, should be officially executed at the Darbar, under the control of the Governor and the Select Committee. The administration of justice, the appointment of Officers, Zamindars etc., whatever comes under the denomination of civil administration, we understand, to remain in the hands of the Nawab or Ministers."

The fundamental defect of this view of the Directors was that though nominally the civil administration was vested in the Nawab all real power was in the hands of the Company and when later on

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the powers of military protection and criminal jurisdiction (*i.e.* of the Nizamat) were taken away from the *Nāzim*, he became a mere shadow with an annual pension of 53 lacs of rupees. Thus was introduced in Bengal a dual system: the actual work of administration being carried on by the servants of the Subha, but the real authority being exercised by the Company. Clive found great convenience in this mask of *Diwani* and warned the servants not to throw off the mask: He wanted to keep up the authority of the shadowy Subha.

He declared "Be it, therefore, always remembered that there is a Subha; and that, though the revenues belong to the Company, the territorial jurisdiction must still rest in the Chiefs of the country, acting under him and this Presidency in conjunction". The mask of *Diwani* also served to disarm the jealousy of foreigners like the French and the Dutch at the aggrandizement of the English.

Even within the three provinces of Bengal, Bihar and Orissa vast stretches of land were unoccupied, and Clive was opposed to extend the authority of the Company beyond them. Members of the Select Committee were for an immediate march upon Delhi to put upon the throne a puppet Emperor. But Clive struck a note of warning: "My resolution, however, was, and my hopes will be to confine our assistance, our conquest, and our possessions to Bengal, Bihar and Orissa. To go further is, in my opinion, a scheme so extravagantly ambitious and absurd, that no Governor and Council, in their senses can adopt it, unless the whole system of the Company's interest be entirely new modelled."^{*}

^{*} Firminger Introduction Chapter VIII

(4) DOUBLE GOVERNMENT UNDER DIWANI 21

This policy of friendship with the Vazier of Oudh who was to be formed as a barrier between the English possessions in Bengal and other powers in North India remained the policy of the English up to the end of the century.*

(4) DOUBLE GOVERNMENT UNDER DIWANI

It is customary to pass lightly over the administration of Bengal during the interval between the departure of Clive in 1767 and the appointment of Warren Hastings as the Governor of Bengal in 1772. As a matter of fact the interval is full of experiments and failures that compelled the Company to throw off the mask and "stand forth as the Dewan" in 1773.

A brief reference must be made to the system of revenue collection under the Moguls. The *Diwan* was charged with the administration of the civil law and the collection of revenue.

Under the Moguls, the fiscal unit in Bengal was the *Pargana* administered by a Zamindar, a group of Parganas forming a *Sarkār*, or *Chaklā*. To control the Zamindar in his fiscal capacity, a *Kanungo* was appointed to each Pargana. He kept the rates of assessments, controlled the survey of the *Pargana*, and generally maintained the rights of the cultivators. What the *Kanungo* was to the Pargana, the *Patwari* (accountant) was to the village.

This was the normal system of revenue collection. But in his anxiety to collect as large a revenue as possible, the *Subha* of the province also made use of the *Fouzdars* whose duty was to preserve peace in the District and overawe and restrain the Zamindars. Most

of the Fouzdars were Persian adventurers that had secured their appointments by speculative offers of lump sums of revenue that they undertook to pay. But as they were not always successful in the collection of revenue the *Subha* made use of local Hindu capitalists. Many of these revenue Collectors managed to become, in course of time, petty Zamindars. "The creation of the smaller type of Zamindars seems to have been due to the desire of the Moorshidabad power to have two strings to its revenue-bow—the Hindu who understood so intimately the habits of the people who paid the revenue, and the Fouzdar who, although distrusted, could squeeze, when occasion required, the petty Zamindars."*

Thus the Zamindars, included persons of varying degrees of importance, ranging from the representative of an ancient Hindu royal family to the revenue-farmer who had raised himself to that status by securing a patent from the Emperor. Whatever his origin, every Zamindar was bound to pay to Government a certain share of the revenue, in return for which he enjoyed the right to retain for himself whatever he collected from the ryots that cultivated the land in excess of the Government assessment. Below the Zamindars were the *ryots* who had to pay to the Zamindars certain dues (of the nature of feudal exactions in Europe) called *Abwabs* in addition to the customary rents. The revenue interests of the Government were watched by the officer called *Kanungo* who authenticated leases and transfers of land, and checked the accounts of the Zamindar. On the other hand the interests of the village were watched by its officer

* Firminger Introduction.

called the *Patwari*, who was maintained by allowances from the cultivators and the grant of village land. The *Kanungo*, representing the State and the *Patwari* representing the village would have been invaluable officers had the whole system not been rotten on account of cesses. As it was the ryots suffered from both.”*

But though, in practice, there were considerable departures from the theory, in Bengal the State was entitled to a revenue only, the Zamindars were entitled to customary rents, paying revenue to the State; and the ryots had a hereditary right to the holdings, subject to the payment of customary rents to the Zamindars.”†

The Company got its first foothold in this fiscal system by obtaining the rights of a Zamindar long before it acquired the grant of *Diwani*. As early as 1696 when Calcutta was founded the Company got the Zamindari of the surrounding tract for which it had to pay annual revenue of Rs, 1500. It had to collect rents from the *ryots* and administer justice in this tract in its capacity as the Zamindar and this novel work was entrusted to a member of the Council. The next step was the acquisition of the 24 *Parganas* from Mirjafar as the price of the help he received from the Company for being made the Nawab of Bengal. A report was made on the condition of land revenue in this extensive tract, and instead of collecting it directly from the ryots or from the Zamindars, the lands were let out in 1759 to highest bidders for three years. This experiment proved disastrous both to the ryots and the Zamindars and

* Firminger : Introduction.

† Dutt : Early British Rule 56.

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also did not yield satisfactory revenue to the Company. When Mirjafar was set aside in favour of Mir Kasim, the Company got from the latter the three 'Ceded' districts of Burdwan, Midnapur, and Chitagong. In each of these districts a 'Chief' was appointed as the servant of the Company, who was responsible for the collection of revenue and the administration of justice. The system of 'farming' revenue, which had been tried in the 24 Parganas was not extended to the 'Ceded' districts.

When, however, Clive obtained the grant of *Dewani* in 1765, the actual work of revenue collection was not undertaken by the Council even though they had got experience of such work in the 'Ceded Districts.' The newly acquired country was so vast, revenue-collection so intricate a business, and demand for money so pressing that the Governor and Council reverted to the simple but disastrous policy of farming out lands to highest bidders. They appointed a Resident at Moorshidabad to watch the collection of revenue through the agency of revenue farmers. This led to great oppression of the ryots and fall in revenue. Richard Becher who was Resident at Moorshidabad has vividly pointed out the evils of the farming system. As the Zamindars could not or would not pay the exorbitant demands made upon them, they were ousted from their lands, and *āumils* who had agreed to pay a fixed revenue were put in their place. As these adventurers had no interest in the land they tried to make as much out of it as possible during their uncertain period of holding, and whole districts were thus impoverished.

Harry Verelst who succeeded Clive as Governor soon realized the evils of the farming system and in

1769 appointed to each district English 'Supervisors' for superintending the collection of revenue. The instructions issued by him for the guidance of these young officers show that Verelst expected much more from them than the mere supervision of revenue. They were to conduct exhaustive enquiries into the economic and fiscal condition of each district. The Directors approved of the appointment of these Supervisors and also instituted two controlling Councils of Revenue, one at Moorshidabad and the other at Patna. But the Supervisors soon became a source of mischief. They were young servants of the Company who, like their seniors, were not free from the taint of private trade, and soon obtained an undue influence in the district on account of their official position which they did not fail to use for their own aggrandizement. During all this time the condition of the people was going from bad to worse, and the terrible famine which visited Bengal in 1770 and which is said to have carried away a third of the population, at the very time when the revenue collections were actually increasing under the methods adopted by the Council at Calcutta, showed that the whole administrative system as established by Clive had become rotten to the core and required drastic reform.

(5) WORK OF WARREN HASTINGS

The choice of the Court of Directors fell upon Warren Hastings who had risen from the lowest rank in the service of the Company to the position of a Resident at Moorshidabad and a Member of the Council at Calcutta. No other person in the service of the Company had better knowledge of the commercial and revenue affairs of that body. The Court

of Directors had in August 1771 despatched the letter in which they ordered the President and Council "to stand forth as Diwan and by the agency of the Company's servants to take upon themselves the entire care and management of the revenues." This was a momentous decision.

'The British administration of India may be said to commence from this date and Warren Hastings may be regarded as the founder of that administration. He with the help of his Council adopted certain measures of reform which may be thus summarised' *

- (1) The lands were to be let out to revenue farmers for a period of five years.
- (2) A Committee of Circuit, consisting of the Governor and four members of the Council, was appointed to visit the principal districts and form the five years' settlements.

As the Directors had declared their policy to 'stand forth as the Diwan' of Bengal, Bihar, and Orissa, he suspended Mahamad Rezakhan (who as Naib Diwan since 1765 was responsible for the collection of revenue under the old system, and who was charged with embezzlement, though subsequently he was found to be innocent), appointed 'Collectors' in the place of the 'Supervisors' appointed in 1769. This was not a mere change in the title; for the Collectors directly collected the revenue. The instructions that Warren Hastings issued to the newly appointed Collectors clearly show the multifarious duties which they were called upon to perform and the high moral standard that was expected of them by the Government. But the Collectors proved even more oppressive

than the Supervisors, and the Directors ordered them to be at once withdrawn, which was done in 1773. Provincial Councils were appointed in the place of the Collectors at Calcutta, Patna, Moorshidabad, Burdwan, Dacca, and Dinajpur. The Councils collected revenue through a body of native *āmil*s appointed to extract the revenue. The Councils of revenue at Moorshidabad and Patna were abolished and final authority in revenue matters was vested in the Council itself sitting as Committee of Revenue at Calcutta, to which place the treasury was transferred from Moorshidabad.*

It became soon clear, however, that the mischief lay not so much with the agency of collection but with the excessive rate of assessment. In spite of the efforts of the provincial Councils vast sums of revenue fell into arrears. In 1781, therefore, the Councils were abolished and the Collectors again reinstated in their office. They made fresh annual settlements with the highest bidders and they were guided in these operations entirely by the newly created Committee of Revenue at Calcutta. Thus the question of revenue collection in Bengal remained unsolved in the days of Warren Hastings.

. Hastings also tried to safeguard the interests of the Ryots from the undue exactions of Zamindars by requiring the latter to give written 'Pattas' or 'agreements' to the Ryots.

Such was the work of Warren Hastings. It is clear that some of the worst abuses of the old system were removed. He was most anxious to raise the tone of the Collectors by depriving them of the opportunity of private trade. But though the machinery of

collection was improved, the method of assessment continued as unsatisfactory as before.

The ultimate cause of the failure of the revenue policy of Warren Hastings is to be found in his having never appreciated the position of the Zamindars. His first anxiety was to get as large a revenue as possible to finance the commercial dealings of the Company. "The good of the people was made subservient to this primary object of the Company's administration; the rights of Princes and people, of Zamindars and ryots were sacrificed to this dominant idea of the commercial rulers of India; and from the point of view of its effects upon the economic condition of the people the administration of Hastings was a failure."¹

Judicial Reforms of Warren Hastings.—A word must finally be said here concerning the judicial reforms of Warren Hastings. What distinguished him from most servants of the Company of his time was his insight into and appreciation of the legal codes and customary laws which the Hindus and Mahomedans had elaborated in the past, and of the system of the administration of justice.

Accordingly the judicial reforms of Warren Hastings are based upon the distinction of powers enjoyed by the *Nāzim* and the *Diwan*. The former, as representing the supreme executive authority, exercised criminal jurisdiction and the latter civil jurisdiction. After a careful survey of the indigenous system of judicial administration, he explained the main reforms to be effected in his letter of August 15, 1772 to the Court of Directors. Commenting upon the state of

* Dutt : Early British Rule, pages 79-80.

judicial administration under the Native Government, Hastings said that there were, in theory, three Courts for the decision of Civil causes (the Court of the Diwan, of the *Deputy* of the Dewan, and of the *Kazi*) and one for Police and Criminal matters (the Court of the Fouzdar); but, in fact, the Dewani Adalat was the only tribunal which exercised any real authority. (2) Under the old system, there were no Courts in the mofussil and all complainants had to go to Moorshidabad,—a procedure at once oppressive, expensive, and tedious. (3) Again the powers claimed by the Zamindars were a source of great oppression to the ryots.

Hastings established in each District two Courts—one Civil (called Diwani Adalat) and the other Criminal (called the Fouzdari Adalat). Over the former the European Collector (who was appointed for the collection of land revenue) was to preside; but the Criminal Court was continued under the old Mahomedan Judges, a general supervision only over them being vested in the Collectors.

At the same time Hastings established two superior Courts at Calcutta: the Sadar Diwani Adalat for Civil matters and the Sadar Nizamat Adalat for Criminal matters. The former was to be presided over by the President and two Members of the Council, and the latter by a Mahomedan Judge, under the general supervision of the Council.

The fees and perquisites which had made the course of justice vexatious and costly under the old system were abolished, and the Judges were given fixed salaries. The District Adalats brought justice within the easy reach of all.

The success of this great reform was jeopardied

by the setting up of the Supreme Court under the Regulating Act in 1774. The conflict between this Court of the Crown and those established by the Company will be referred to in the next chapter but we will so far anticipate the result as to say that the action of Hastings was justified by Parliament which passed the Amending Act of 1781.

Hastings also passed many Regulations by which the Collectors of revenue or their agents were forbidden to engage in private trade or to farm revenue or to receive presents. By transferring the Board of Revenue from Moorshidabad to Calcutta he simplified the collections and reduced the system to a routine. "In transferring from Moorshidabad to Calcutta the seat of the Supreme Courts of justice, the head seat of revenue administration and the Khalsa, Hastings was instituting a policy deliberately designed to make the last named place the capital of British Bengal. If Job Charnock is to be considered the founder of Calcutta as a seat of trade, Hastings may be regarded as the founder of Calcutta as the political capital of the British Empire".*

The reforming zeal of Hastings was for a time held in check by the difficulties caused by the Regulating Act. Some of them were removed by chance and others by deliberate legislation by Parliament. Thus the death of Monson in 1776 made matters easy for Hastings in the Council. His most powerful antagonist was, of course, Philip Francis. The bitter controversies between these two members reached the dramatic climax of a duel fought at Calcutta in August 1780 after which Francis returned to England

* Firminger - Introduction, page 230

to organize a definite party in Parliament for the impeachment of his colleague. Hastings now got the opportunity of resuming his work of improvement. In 1776 after the expiry of his first 5-year settlement he had appointed a separate Commission to carry out a fresh settlement of land revenue. Francis opposed the principles on which the settlement was to be carried. Hastings wanted to find out the value of land by letting it to the highest bidder; Francis wanted to make the settlement with the Zamindars whom he regarded as the owners of lands. Hastings wanted to make the settlement for life; Francis was in favour of making it *permanent*. There is no doubt that in this controversy the attitude of Francis was more liberal than that of Hastings and the views which he propounded made a powerful impression on the minds of the Ministers in England and ultimately were embodied in the Permanent Settlement of Bengal. Firminger observes: "Francis may with justice be described as the original promoter of the Permanent Settlement of Bengal." *

For the present the Directors accepted neither the views of Hastings nor of Francis but insisted in 1778 on annual Settlements, to the detriment of Zamindars as well as the ryots. In 1781 Hastings appointed a Committee of Revenue for the administration of land revenue. He abolished the Provincial Councils of Revenue and reinstated the Collectors in each district. The Collectors have since then remained the pivots of district administration under the British Rule.

The Diwani Adalats he had set up had received

* Introduction : page 293.

a rude shock on account of their conflict with the Supreme Court. In the Mofussil Adalats he appointed separate Judges as Superintendents who had nothing to do with the revenue work. He cut the Gordian knot of the conflict between the Sadar Diwani Adalat and the Supreme Court by making Sir E. Impey—the Chief Justice of the latter Court—as the Superintendent of the former Court. Hastings expected that a common headship would lessen the distance between the two contending authorities and subsequent developments have fully justified the action of Hastings.

In 1861 the Supreme Court was united with the Sadar Diwani Adalat to form the High Court. The High Court exercises general supervision over the mofussil Courts and has an appellate jurisdiction over them.

The Criminal Courts in the mofussil had continued to function under the Fouzdars. When the Collectors were reinstated in 1781 Hastings invested them with magisterial powers. They could apprehend persons charged with crimes and commit them for trial to the nearest Fouzdari Court. This is the beginning of the combination of judicial and executive functions in the same official, and to this day forms an important feature of district administration.

Another defect of the Regulating Act was removed by the Amending Act of 1781. The Governor General and Council, jointly or severally, were declared as not subject to the jurisdiction of the Supreme Court for acts done in their public capacity. Similarly, the Supreme Court was to have no jurisdiction in matters concerning the collection of revenue. Finally, the hardship of applying English law to Indians was mitigated by the provision of the Amending Act that

matters of dispute between parties should be determined in the case of Mahomedans by the laws and usages of Mahomedans, and in the case of Hindus, by the laws and usages of the Hindus, and where one of the parties was a Hindu or Mahomedan, by the laws and usages of the defendant.

Both these amendments vindicate the actions of Warren Hastings.

The revenue and judicial reforms of Warren Hastings clearly bring out the transformation of the Company from a commercial body into a territorial power. The 'mask' of Diwani was thrown off and the Company stood forth as the real ruler of Bengal, Bihar and Orissa. It was now impossible to avoid two consequences of such a transformation: increased Parliamentary control in England and further territorial expansion in India. We shall examine these developments in the next two chapters.

CHAPTER II

FIRST ATTEMPTS AT PARLIAMENTARY CONTROL (1774—1784)

(6) THE REGULATING ACT

Misgovernment in Bengal.—Cornwall Lewis declared in the debate held in the House of Commons on the Bill that finally transferred the Government of India from the Company to the Crown, that no civilised Government existed on the face of this earth which was more corrupt, more perfidious and more rapacious than the Government of the East India Company from 1765 to 1784. Reference has already been made to the evil system of 'Double Government' that came to be established in Bengal as a result of the acquisition of *Diwani*. Clive could not stop the oppression of the people by the servants of the Company or the corruption of the latter. Though the evil of private trade as carried on by the Company's servants was checked to some extent, the monopoly which was established in the production of salt proved most oppressive to the people. In fact, it was from now (1767) that the Company began to use the powerful lever of political authority to extend its commercial operations. The surplus revenue of a populous province was utilised for the purpose of making what were called 'investments,' or the buying of goods, raw produce, and manufacture for exportation to Europe. It followed, as Burke said, that "whereas in other countries revenue arises out of commerce in Bengal the whole

foreign maritime trade, of which the Company had monopoly, was fed by the revenue."* The dangers of this 'economic drain' were aggravated by the circumstance that the system of revenue assessment and collection at once impoverished the Zamindars, oppressed the ryots and threw large areas out of cultivation. This impoverishment went on *pari passu* with the systematic policy of killing indigenous industries of spinning and weaving which was followed by the Company.† No wonder then that the famine of 1770 found the people absolutely wretched and helpless and carried away a third of their number. The horrors of famine were followed by those of War and rapine, what with the Rohilla War and the recrudescence of Maratha invasions.

If the *Diwani* produced in Bengal the result of intensifying the dangers of a situation in which traders had become Rulers of territories, it made the Proprietors in England more greedy. They regarded the *Diwani* as marking the beginning of a golden millenium. They raised the rate of dividend to 10 and 12 p. c. when, as a matter of fact, the financial position of the Company was very critical. The stock of the East India Company was in universal demand, not only because the dividends were high but also because the political power they represented was great.

The Directors, on the other hand, were painfully aware of the state of corruption prevailing in Bengal and the indebtedness of the Company. A conflict of interest thus arose between the Proprietors and Directors, and it was fomented by the dissatisfied

* Lyall: page 147.

† See India under Early British Rule by Dutt.

servants of the Company returning home and this conflict attracted the attention of Parliament. It appointed Committees of enquiry into the affairs of the Company,* and as a result, limited the rate of dividend to 10 p. c. But the embarrassment of the Company continued and the Court of Directors approached the Ministry of Lord North for a loan of one million pounds. They attributed distress in Bengal to the misdoings and rapacity of their servants who were beyond their effective control. Nor was Government less eager to seize the opportunity thus afforded of having a voice in the affairs of the Company, of devising such measures for the better administration of Indian affairs as would bring the Company's business at Leadenhall under the control of Ministers at Westminster. "The policy which brought into existence the Regulating Act of 1773 looked in these two directions—the removal of the evils which had their operation in the constitution of the Company, and evils which had their operation in India"† and its provisions can be grouped as dealing with the one or the other set of evils.

Evils in England.—Reference has been made to the Court of Proprietors and the Court of Directors of the East India Company. The qualification for voting in

*NOTE: To escape from the Parliamentary "inquiries" the Directors proposed to send out a Commission of supervisors to India over which Edmund Burke was asked to preside, but he refused. "How different might have been the subsequent course of events in India, had even a ground plan whereon to build had been laid down by the noble, just, generous, far-sighted intellect of him who has been truly designated by Lord Macaulay as beyond comparison the greatest man of his time" Torrens : 77-78.

† Fisher Introduction page 255

the former was the possession of stock of the value of £500 and in the latter of £1000. The Directors were 24 in number and were annually elected. Each Director received a salary of £300. The Chairman and Deputy Chairman got £500 per year. The Directors coveted their post not for the pittance of a salary that they got but for the possibilities it opened for providing their sons and relations with lucrative jobs in India. Hence the scramble to purchase enough shares of the Company to get oneself elected to the Court of Directors. Votes in the Court of Proprietors were manipulated to defend the evil deeds of servants of the Company in India. It became the ambition of many servants when they returned home after making their fortune in India to purchase shares of the Company and manipulate votes, or to enter Parliament. Hence arose the evil of 'trafficking' in votes. Also Parliamentary corruption and the consequent demand for Parliamentary reform which began in the latter half of the Eighteenth century can be traced to the ill-gotten wealth of these "Indian Nabobs". The Regulating Act tried to mitigate this defect so far as the East India Company was concerned by raising the qualification for a Proprietor to £1000 and for a Director to £2000, and by prolonging the period for which the Directors were elected, a quarter, instead of the whole body, being renewed annually.

Turning next to the evils that had their operation in India the chief remedies adopted by the Regulating Act were the following :

- (1) A new executive Government for Bengal.
- (2) Its control over the Presidencies of Madras and Bombay.
- (3) Purifying the Civil Service of abuses.

(4) Setting up of a Supreme Court at Calcutta.

(5) A new procedure for the making of Regulations.

A new Government for Bengal.—We have already referred to the defect of the system of a President and Council managing the affairs of the Company in each of the three Presidencies. The Members (generally senior merchants) were too numerous and were scattered over the whole Presidency and rarely attended the Council Meetings at Calcutta. The result was that the less senior servants who were at the Capital were afraid of checking and correcting the actions of their superiors in the mofussil. We have also seen how Clive formed a 'Select Committee' as an instrument to reform the administration. But soon a conflict ensued between the new Select Committee and the old Council. Warren Hastings complained of the great weakness of the executive Government in Bengal that resulted from this conflict. But the greatest defect of the system was that all members (including the President) were servants of the same Company and thus there was no independent check over them.

By the Regulating Act, the Civil and Military Government of Bengal, Bihar, and Orissa was vested in a Governor-General and four Councillors—all of whom were named in the Act—who were to hold office for five years and who were not removable in the meantime except by the King on the representation of the Court of Directors. It is important to understand the exact meaning of this provision. Parliament sought to control the actions of the Governors by imposing upon them Councils consisting of men specially sent out from England, and such as were not

servants of Company. As a further check upon the Governor-General, the decision of the majority was made binding upon him who had a casting vote in case of an equality of votes.

Relations with other Presidencies.—Before the Act the three Presidencies were absolutely independent of each other, and responsible only to the Company in England. By the Act the supremacy of the Bengal Presidency over the other two was definitely asserted at any rate in the declaration of war and negotiations for peace.

Purification of the Services.—Before the Act, the pay of the Civil and Military servants of the Company was almost nominal and few resisted the temptation of substantially increasing it (1) by extorting bribes, (2) by receiving presents, (3) by engaging in private trade and (4) by advancing money at usurious rates to Indian Princes. By the Act, liberal salaries were provided for the higher classes of servants and all were prohibited from practising the evil methods above mentioned, on pain of being fined, imprisoned, and sent to England for trial.

The Supreme Court.—Reference has already been made to the existence in Calcutta of the Mayor's Court which was established by the Charter of 1726.

An appeal against the Mayor's Court lay to the President and Council at Calcutta, and in the last resort to the King-in-Council in England. The fundamental defect of this system was that there was no separate and independent judicial check over the actions of the executive. The very merchants whose conduct was to be judicially examined by the President and Council, were members of the Council.

Now the Supreme Court was not a Court of the

Company at all, but one established by a Royal Charter and consisting of a Chief Judge and three Puisne Judges. It was to exercise Civil, Criminal, Admiralty, and Ecclesiastical jurisdiction, and its jurisdiction was to extend to all British subjects in Bengal, Bihar, and Orissa, except the Governor-General and his Council who could not be arrested or imprisoned in any action or suit proceeding in the Supreme Court.

With regard to the native inhabitants of Bengal, Bihar, and Orissa suits might be filed against them in the Supreme Court with their consent. An appeal against the Supreme Court was to lie to the King-in-Council in England.

Regulations.—We come now to the last provision made by the Act *i. e.* for the making of *Regulations* :—The Governor-General in Council was to have power 'to make Regulations for the good order and Civil Government of the possessions of the Company.' The Regulations so framed were required to be registered and published in the Supreme Court with the assent of the Court, and might be set aside by the King in Council.

Criticism of the Act.—Before proceeding to criticise the Act, it must be pointed out that it is the first instance of Parliament dealing with the affairs of India by means of an enactment. Parliament had no precedent to guide it, and as such, it has to be judged leniently. Lyall rightly says that the ill-constructed Regulating Act 'stands towards our latest system in the same relation as does the earliest traction engine to the present locomotive.*' Further, it must be remembered that the Act was based upon the 'theory of separation of powers—legislative, judicial and

* Lyall : page 152.

executive' which was so popular in Europe at that time. Each was to be independent of and a check over the other two. Thus the 'Regulations' made by the Governor-General in Council were required to be registered in the independent Supreme Court, which in its turn was to be a check upon the servants of the Company. But this system of checks and balances was not suited to the position of the Company in Bengal, and thus during the whole period of the first Governor-General under the Act—Warren Hastings,—he had to contend against difficulties caused by the operation of the Act. We may summarise these defects and difficulties as follows :—

(a) Out of the four Members of the Council that were named in the Act, Francis, Clavering, Monson, and Barwell, the Governor-General could depend upon the support of the last, whereas Francis had come out to India with an inveterate prejudice against Hastings and soon formed, with the help of Clavering and Monson, a standing opposition to him. And as the Governor-General was always bound by the vote of the majority, he was rendered absolutely powerless during the two years that the majority was against him *i. e.* until the death of Monson turned the tables against Francis. The Council even proceeded to undo the work which Hastings had accomplished as the Governor of Bengal during the preceding two years. This seriously undermined the position of the Governor-General not only in Bengal, but with regard to the control he was called upon to exercise over the other two Presidencies.

(b) In this respect also the provisions of the Act were defective, for the extent of control to be exercised over the subordinate Presidencies was at once small

and undefined. How serious the situation was capable of becoming is well brought out by a reference to the Maratha and Mysore wars fought at this time. Hastings protested against the Bombay Government interfering with the affairs of the Peshwa, and the Madras Government inviting the hostility of Hyder. The Marathas and Hyder made a common cause and at no time were things as bad for the English as they were in 1780. But Hastings rose to the occasion and the death of Hyder in 1782 removed the last obstacle to the making of a lasting peace with the Peshwa (the treaty of Salbye). Thus in 1785 when Hastings resigned his office, the English were at peace with the native powers of India. "With the termination of this War ended the only period, in the long contest between England and the native powers, during which the position of the English in India was for a time seriously jeopardied. That the English dominion emerged from this prolonged struggle uninjured though not unshaken, is the result due to the political intrepidity of Warren Hastings."*

(c) But it was in the matter of the clauses dealing with the Supreme Court that the Regulating Act was most defective. We have already seen how Warren Hastings had established Judicial Courts in each District, and made the Governor-General in Council the highest tribunal both in Civil and Criminal matters. These Courts had been established to exercise the powers received by the Company under the Diwani. They had jurisdiction over all subjects of the Company—British and Indian,—and they mostly applied the written or customary law of the party that had sought their help.

The relations of the Supreme Court with these Courts of the Company were not precisely defined. The Supreme Court, on the ground that it was constituted by a Royal Charter, claimed the right of hearing appeals even against the highest Courts of the Company, *i. e.*, the Governor-General in Council.

Further they claimed jurisdiction upon the entire native population and not merely upon 'British Subjects' as mentioned in the Act. There was no proper definition of the expression 'British Subject'. The Supreme Court included in that term the British and Indian servants of the East India Company employed in the administration of justice or the collection of revenue, and even the land-holders and farmers of revenue.

It was thus inevitable that the Supreme Court should come in conflict with the Governor-General in Council, who was at once the highest judicial and executive authority of the Company in Bengal.

The difficulty was partly owing to the failure to understand the intention of Parliament in setting up the Supreme Court. "The Judges in the Mayor's Courts of the Company were junior servants of the Company, and removable at the pleasure of the President and Council. They had to decide, without any professional knowledge of the law, cases affecting the property, the liberty, and the lives of British subjects and their native dependants. The process of an appeal from the Court to the King-in-Council was tedious. The institution of the Supreme Court was, therefore, an act of reformation rather than of innovation. It was not intended to supersede or trespass upon the judicatures deriving their authority from the Mogul Constitution. The Directors looked upon the Supreme

Court as an instrument to terrorize the servants in Bengal. Its establishment enabled them to take the trial of alleged offences of its servants out of the hands of a complacent Council Board, and have such cases determined by the awe-inspiring Puisne Judges of the Crown."*

But, as already stated, the Supreme Court in exercising jurisdiction over the servants of the Company, particularly in the matter of revenue collection where there was the utmost scope for oppression and corruption, was bound to come in conflict with the Governor-General in Council. The nature of the conflict is well brought out in two historical cases: the Patna Case, and the Cossijurah Case. In the former the Supreme Court held that the law officers of a Provincial Council of Revenue acting in their judicial capacity were amenable to its jurisdiction. In the latter case the Raja or Zamindar of Cossijurah was seized and forced to present himself before the Supreme Court on the ground that as a farmer of revenue he was amenable to its jurisdiction. The violent proceedings of the Court in both these cases struck terror in the hearts of the executive offices of the Company as well as the Zamindars.

As Firminger ably points out, (in his Introduction to the Fifth Report) "the survey of the years 1774-80 shows the fact that the method of the authors of the Regulating Act had produced a most serious harvest of evils. That method was to impose a feeling of responsibility on the Company's servants by confronting persons accused of oppressive conduct with the displeasure of a Supreme Court composed of His

Majesty's Puisne Judges. This procedure was calculated to intimidate the fearful as well as to restrain the overbold; it ruined the moral influence of the executive, and exposed the officers of Government to continuous persecution by litigious or irresponsible persons. That the Government of the country was seriously disturbed by the intervention of the Court in matters belonging to the Diwani cannot be doubted, though the blame lies with the Act and not with the Judges."*

Nor was the Supreme Court popular with the Native population. As Mr. Cowell says "the English lawyers struck the greatest fear among the Native population;" and Macaulay described the rule of the Supreme Court as a Reign of Terror. The Court was charged with stopping the wheels of Government by technicalities of English law and of effecting a total dissolution of social order.

Conclusion.—It will thus be seen that the lessons taught by the Regulating Act were:—(a) that a majority of the Council cannot be, at any rate under the conditions of difficult communication with the Home Authorities which obtained at that time, the ultimate authority in India, which must be the Governor-General armed with the power (though the power may rarely be used) of over-riding the decision of that majority; (b) that the resort to the method of controlling the Indian executive by an independent Supreme Court was premature; and finally, (c) the disastrous working of the Act "ended with the conviction on the part of Parliament, that the endeavour to subject the Local Government (*i. e.*, the Governor-General in

* Firminger : page 257.

Council) to *direct* Parliamentary control was a complete failure."*

At the same time, the Regulating Act undoubtedly marks an important stage: "the administrative centre was now definitely located at Calcutta, with the Governor-General as its acknowledged head, invested with the chief control of the foreign relations of the three Presidencies, and deriving his authority from a Statute of the British Parliament."†

(7) PITT'S INDIA ACT 1784

Parliamentary Enquiries.—These lessons of the Regulating Act were not lost upon those Members of the House of Commons who were taking a keen interest in what was happening in India. Philip Francis after his return to England had formed a definite party in Parliament that was pledged to bring about the recall of Warren Hastings and to institute legal proceedings against him. The hands of this party were strengthened by the accession of Edmund Burke to it as its leader, and by the reports of the many questionable means adopted by Hastings to get money to carry on his wars. Parliament was thus compelled to appoint two Committees one under Burke and the other under Dundas—to conduct an enquiry into the doings of Hastings, and as their reports were unfavourable to the Governor-General and the Chief Justice (Sir E. Impey), it demanded their recall. But the Court of Proprietors (in which votes could be easily manipulated by any interested group) refused to recall Hastings. A grave constitutional crisis thus arose. The problem of problems

— Cornewall Lewis: Speech 1853 in the H. of C.

† Lyall: page 156

now was, not how to *regulate* the affairs of the Company *in Bengal*, but how to *control* the Company *in England*.

Fox's India Bill.—The first solution offered was that by Charles Fox who at this time was in power along with Lord North in what is notorious as the "hated coalition." Fox proposed to distinguish sharply between the commercial operations of the Company from their political dealings; he next proposed to abolish the Courts of Proprietors and Directors, and replace them by two bodies of 'Commissioners'. One (which was the less important of the two, consisting of nine members nominated by the Court of Proprietors) was to deal with the commercial affairs of the Company. To the other, which was to consist of 7 Commissioners, *all named in the Act*, was to be entrusted the entire and absolute management of the political affairs of the country such as the appointment and dismissal of the servants of the Company, the administration of the territories and revenue of the Company etc. Vacancies during the first five years were to be filled by the King alone.

• Herein lay the fatal weakness of the proposals of Fox. It was rightly contended by his enemies that the proposed plan would place the entire patronage of the East India Company in the hands of the Ministers of the Crown, and that this would seriously endanger the Constitution of England. The Ministers would use the Indian patronage as an irresistible lever to control votes in Parliament and thus make themselves independent and despotic. It is to the alarm caused by this constitutional aspect of the Bill that its failure must finally be attributed, though the open hostility of King George III to Fox was the immediate cause of

the Bill being thrown out in the House of Lords, and the Minister himself being forthwith dismissed.

Pitt's India Act.—The task of dealing with the Indian problem now devolved upon the younger Pitt, the successor of Fox. He carefully left untouched the patronage of the Court of Directors. Nor did he introduce such a radical change in the constitution of the Company as was proposed by Fox. He retained both the organs of the Company namely the Proprietors and the Directors. The latter were also allowed to manage their commerce as they liked. But their political affairs were definitely brought under the control of the Imperial Government. This was accomplished by the creation of a Board of six Commissioners known popularly as the Board of Control. It was to consist of the Chancellor of the Exchequer, one of the Secretaries of State for the time being, and four other Privy Councillors appointed by the King and holding office during pleasure. To this Body was committed the "superintendence, direction and control of all acts, operations, and concerns which in anywise relate to the Civil or Military Government or revenues of the British territorial possessions in the East Indies." The Board was to have an effective control over the entire correspondence to and from India. A 'Committee of Secrecy' was formed consisting of the Chairman, the Deputy Chairman, and the Senior Director, and when the Board issued orders requiring secrecy, the Committee of Secrecy was bound to send the orders to India without informing the other Directors. Under the changes made by Pitt, the Court of Proprietors was reduced to a position of insignificance. Their activity was confined to the receipt of dividends and the election of the Directors

The latter retained their right of making appointments in India, though the Crown was vested with the power of recalling any of the servants of the Company.

The changes made by Pitt's Act in the system of Government in India were neither numerous nor important. The Councils of the Governor-General and of the Governors were to have three instead of four Members, one of them being the Commander-in-Chief. The control of the Governor-General in Council over the subordinate Presidencies was extended to include the application of the revenues of the Presidencies.

Finally, Pitt's India Act imposed a definite principle upon the Governor-General in Council to guide him in his relations with the Indian Princes so as to avoid all wars and conquests.

"Whereas, to pursue schemes of conquest and extension of dominion in India are measures repugnant to the wish, the honour and policy of the Nation," the Governor-General and Council were definitely precluded from making war or peace with the Indian Princes without the permission of the Court of Directors.

This is known as the policy of "Non-intervention." A brief account of the alternating periods of adherence to and departure from this policy will throw light upon the course of territorial expansion of the E. I. Company.

PART II

SYSTEM OF DOUBLE GOVERNMENT

CHAPTER III

HALF A CENTURY OF TERRITORIAL EXPANSION (1785—1835)

(8) CORNWALLIS AND THE NON-INTERVENTION POLICY

We saw in the second Chapter how the 'policy of Non-intervention' was imposed upon Lord Cornwallis by the Act of 1784. Conditions in Northern India were favourable for adhering to such a policy. The English possessions were safe behind the "buffer" State of Oudh and the Nawab Vazier of that province depended entirely upon the Company for the defence of his territories. In the remaining portion of Northern India, the Marathas were everywhere in the ascendancy and Mahadaji Scindia, particularly on account of his 'understanding' with Warren Hastings, had become the real authority behind the Imperial Throne at Delhi. Lord Cornwallis refused to disturb this ascendancy of the Scindia, and therefore did not help (1788) the son of Shaha Alam, who was a fugitive at Benares, to recover the Throne of Delhi from the Marathas.

But things in South India were shaping themselves differently. Here there was a balance of power between Tipu (who was anxious to check the progress of the English) the Marathas who wished to regain the

territories they had lost during their domestic troubles from both Tipu and the Nizam of Hyderabad; and finally, the last Prince, who was the weakest of the three, and therefore, most anxious to get English support, against the Marathas and Tipu.

Tipu was a great believer in the value of French help in his struggle against the English. He sent out an embassy to the Court of Louis XVI. The immediate cause of the outbreak of war was his attack upon the Raja of Travancore, an ally of the English. Lord Cornwallis formed a Triple Alliance between the English, the Marathas and the Nizam, defeated Tipu and forced him to part with half of his dominions and three crores of rupees. The acquired territory was equally distributed among the Allies, the English getting Malabar, Coorg, Dindigul, Baramahal, and the command of the passes through which Hyder used to descend upon Madras. Thus the Madras possessions were rendered quite immune from further trouble from Tipu.

(9) WELLESLEY'S DEPARTURE FROM THE POLICY

Wellesley's Policy.—If Lord Cornwallis had to engage himself in a single war against a single power in South India Wellesley made the whole of India the theatre of extensive wars and of more extensive conquests.

Mention has been made of how the struggle between the English and the French in Europe only helped to extend British power in India. The same thing was now repeated. The whole of Europe was fighting against Revolutionary France in the person of Napoleon Bonaparte. As the latter could not, on account of the Naval supremacy of the English, make a direct invasion of England he wished to strike at his enemy in India

52 (9) WELLESLEY'S DEPARTURE FROM POLICY

where he found a willing ally in Tipu Sultan. Wellesley was thoroughly imbued with anti-French spirit and immediately on his arrival in India, he found himself involved in a war with Tipu in which Tipu was completely vanquished and killed. The Mahomedan kingdom of Hyder and Tipu was altogether destroyed, and out of a portion of its still extensive dominions was recreated the Hindu Raj of Mysore which was restored to a representative of the ancient Hindu Royal Family.

But Wellesley was not to be satisfied with a local or temporary solution of the great question he had proposed to himself : what was to be the status of the English in India ? Though they had come to hold a commanding position in Northern and Southern India their territorial possessions were confined to Bengal and small portions of Madras and Bombay. Wellésley was convinced that the condition for the English continuing in India was not that they were *one* among many Indian powers contending for supremacy, but that they were *the* paramount power in India. The result of the pursuit of this policy has been summed up in the statement : that under Wellesley's direction the British Empire *in* India was transformed into British Empire *of* India.

Wellesley's Subsidiary Alliances.—With this object in view he set about bringing all the remaining Indian powers in a relation of subordination to the British authorities, by means of "*subsidiary alliances*." One of the first powers to be thus 'allied' with was the Nizam. He was indignant at the policy of neutrality adopted by Sir John Shore in his (Nizam's) struggle against the Marathas who had defeated him (Nizam) crushingly in the battle of Kharda (1795) and who out of resent

ment for his (Nizam's) desertion, was reorganizing his army with the help of French Officers. But a fresh treaty with the Nizam (September 1798) was concluded and he disbanded his new levies under French Officers, accepted an English subsidiary force to be stationed at Hyderabad and agreed to cede the territories that had fallen to his lot in the late partition of Mysore as the price of the force, and above all left his relations with the Peshwa to be shaped by the English.

As these alliances proved a powerful weapon of reducing the Indian powers to a position of subordination, a word must be said here about their general characteristics. The Prince (with whom such a treaty was concluded) had (a) to leave his disputes with and claims upon his neighbours to the arbitration of the English, (b) to discontinue all connection with foreign European powers, particularly the French, (c) to entertain within his territory a British Subsidiary Force for his own personal protection and for the security of his possessions and finally, (d) to cede territory to the Company by way of payment for the subsidiary force.

Wellesley only developed a system that had been begun by Warren Hastings of placing English army at the disposal of a Prince for a monetary consideration, as in the Rohilla War, and of the treaty with the Nawab Vazir of Oudh made by Sir John Shore, by which, for the sum of 76 lacs of rupees, the Company undertook to protect that Prince. Also, before Wellesley, the British Contingent was stationed *outside* the territory of the Prince, was paid for by monthly or annual *cash* allowances, and helped and protected the Prince on the basis of *equality*

But this arrangement was found to be unsatisfactory as the pay of the force often fell into arrears, and as it was still possible for the Prince to carry on his foreign relations, he could have an army of his own trained and officered by the French.

Wellesley had seen how on the European Continent the younger Pitt was carrying on the struggle against Napoleon by giving subsidies to the Continental Powers. In adopting this policy of Pitt, Wellesley reversed it and in return for subsidies (converted into territorial cessions for regularity of payment) he placed contingents of his army at the disposal of Indian Princes. The Company was thus enabled to increase vastly its own army at the cost of the Princes, and also to have it stationed in the very heart of the territory of the Princes. At the same time the danger of French influence at the Courts of Indian Princes was removed altogether. And the Company could effectively check the foreign relations of the Prince, who was thus isolated from the rest of India, and at the same time made dependent upon English support.

But the effect of these alliances on the Princes was deplorable. Even Arthur Wellesley was apprehensive about dangers of such alliances. They led to the complete annihilation of the military power of the Native States with which they were contracted. They removed the incentive on the part of the Native Rulers to be great and warlike and sympathetic towards their subjects.

Nor should a further disadvantage of such alliances be allowed to pass unnoticed; these alliances gave frequent opportunities of interfering in the internal affairs of the Ruler, and at the same time, the ever-recurring adjustment of payments served as the pre-

tence for further annexation as in the case of Berar taken from the Nizam as late as 1903.

Wellesley and the Marathas.—From the Nizam Wellesley turned his attention to the Peshwa and the Maratha Confederacy of which he was the head. The Marathas though severely defeated at Paniput (1761) had built up an extensive Empire, thanks to the superior organization of their armies under great leaders like the Gaikwads, the Holkars, the Scindias, and Bhonsles. These leaders were loyal to the central authority of the Peshwa until the death of the great Madhavrao I in 1772. But after the First Maratha War (1775-83) the loyalty of the Maratha leaders diminished *pari passu* with the weakening of the central authority, and with the excellent opportunities each of those leaders obtained to carve out a dominion for himself in Central and Northern India. Holkar and Scindia particularly began to maintain large armies trained and disciplined by French officers, and neither was blind to the imminent danger to the Maratha Confederacy threatened by the growing power of the English. Before, however, the new armies could be combined and turned against the foreigner, Mahadaji Scindia who alone among the Marathas proved an apt pupil of his European rivals in the arts of Diplomacy, War, and Government, died in 1794. His powerful army, now entirely under the domination of French Officers, proved the ruin of his weak successor Daulatrao, who only used it to cripple Holkar in the North and the Peshwa in the Deccan. The only hope of putting off the inevitable break-up of the Maratha Empire lay in the coincidence of two things: that Nana Farnavis should once again establish his power at Poona by bringing under control the

incapable Peshwa Bajirao II, and that the Governor-General should be an adherent of the policy of non-intervention. But about the very time that Lord Wellesley was at the helm of affairs in India, and was waiting for an opportunity to strike at Poona, Nana died (1800). With him, as Colonel Palmer said, departed the wisdom and moderation of the Maratha Government. And the Peshwa Bajirao antagonized his Brahman and Maratha Sardars and had to fly from his capital to Bassein where he sought the protection of the English.

The Treaty of Bassein (1802) which was thus concluded with the Peshwa was the thin end of the wedge that Wellesley thrust in the Maratha Confederacy. The three Maratha Chiefs—Scindia, Holkar, and Bhonsle would not accept the treaty, declaring that the Peshwa as the head of "the Confederacy ought not to have contracted it without consulting them.

Thus the Treaty of Bassein really involved Wellesley in "the interminable war with the many-headed Maratha Confederacy."* By this treaty the Peshwa agreed to cede to the English territory worth 26 lacs of rupees, for the services of a British contingent to be stationed in his dominions. He also agreed to conduct his foreign relations through them, and even his claims upon the Gaikwad and the Nizam were left to the arbitration of the English.

Operations were simultaneously begun against the Marathas in different parts of India. In the Deccan the campaign was sharp and decisive. Arthur Wellesley (the Duke of Wellington) having defeated the combined armies of Scindia and Bhonsle at

* Dutt - *Early British Rule* page 11

Assaye (September 23rd 1803) and of Bhonsle at Argaon (November 29), Subsidiary treaties were made with both these Maratha princes.

But the campaign against Holkar proved abortive and it appeared that an extensive combination among the Marathas was imminent. This alarmed the Court of Directors who were already protesting against the financial burdens of the late wars of Wellesley and who had other grievances against the Governor-General, and the latter, therefore, was peremptorily recalled.

Wellesley and other Native Powers.—In addition to entering into subsidiary alliances with the more important Indian Princes, Wellesley also annexed the territories of many minor Rulers on grounds which cannot bear close examination. Thus he practically annexed the whole of the Karnatic, the Nawab of which kingdom was the first ally of the English in their struggle against the French and Hyder.

Advantage was also taken of succession disputes at Tanjore, to transfer the civil and military Government of this small Maratha principality to the Company.

The Nawab of Surat dying about this time, that principality also was annexed. Similarly also the boy Nawab of Farakkabad was made to give up his possessions. Finally came the annexation of half the territories of the Nawab Vazier of Oudh.

The policy of annexing one-half of the kingdom of Oudh has been condemned by historians like Mill, and even those who justify the policy base their argument on the ground of necessity. Thus Hutton, the biographer of Wellesley in the Rulers of India Series, says "after all the one cardinal justification of Wellesley's policy lies, not in any benefit to the population or in an extension of the Company's

dominions or revenues, but in an absolute political necessity."

We have now glanced at the various annexations of Wellesley. His part in shaping the map of British India has been thus summarised by Sir Alfred Lyall. "By occupying the Imperial cities of Delhi and Agra with the contiguous tracts on both sides of the Jumna, and by annexing the whole country between the Ganges and the Jumna rivers, he carried forward British territory from Bengal North-Westward to the mountains with a frontier resting upon the upper course of the Jumna; and by his acquisitions of the Cuttack Province he secured the continuity of British territory south-eastward along the sea-coast, joined the two Presidencies of Bengal and Madras and established sure communications between them."*

It should be noted also in this connection that the disappearance of the Mahomedan kingdom of Tipu rendered the sea-coast of southern India free from the designs of the French.

(10) REVERSION TO NON-INTERVENTION POLICY.

The costly wars of Lord Wellesley brought about a reaction against the aggressive policy followed by that Governor-General and, as already stated, Lord Cornwallis was sent out to India to reverse that policy. Though he died shortly after arrival, during the time of his successor Sir George Barlow, the negotiations with Scindia and Holkar were brought to an abrupt termination and each was allowed to deal with his feudatories and neighbours as he liked. No new relations were established with any Indian powers

except those with whom definite treaty obligations had been previously made.

Lord Minto, under orders from the Directors, did not interfere in the affairs of Central India.

When Lord Hastings succeeded Lord Minto, he was called upon to face a situation which was the necessary outcome of the 'Non-intervention Policy.' Those Princes with whom subsidiary treaties had been concluded, disbanded their native armies and their soldiers went to swell the hordes of free-booters known as the Pindharis. The ravages committed by bands of these marauders who had their haunts in Malwa were soon extended to the territories of the English and their allies, and their leaders were known to be in correspondence with the Peshwa, Scindia, Holkar, and Bhonsle. Each one of these Maratha powers in turn had become a source of apprehension to the Company. At Poona the Peshwa, Bajirao II, was chafing under the restrictions imposed upon him by the treaty of Bassein and he was secretly levying troops to oppose the subsidiary force. Daulatrao Scindia wished to compensate himself for the territories ceded to the English by seizing the districts of Holkar and by harsh exactions from his Rajput feudatories. But he was a mere tool in the hands of his unruly army and as he was also an active supporter of the Pindharis, the central position he occupied with reference to military operations in North and Central India, made his attitude extremely menacing. Affairs at Indore and Nagpur were in a worse condition. Jeswantrao Holkar was dead, and the Pathan Officers of his army were all-powerful. At Nagpur also the death of Raghoji Bhonsle was followed by disputes about succession. In the end Appasaheb who was

60 (11) HASTINGS DEPARTURE FROM POLICY

openly hostile to the English and a strong partizan of the Peshwa, got his claim recognised by the latter and became the Ruler of Nagpur.

(11) LORD HASTINGS'S DEPARTURE FROM THE POLICY

It will thus be seen that the whole situation was fraught with the greatest dangers. Lord Hastings felt that the only way to meet it was to depart from the 'Non-intervention Policy.' He proposed to build up a confederation of such Indian powers as had suffered from the depredation of the Pathans and the Pindharies with a view to confine their ravages to a smaller area and ultimately to stop them altogether. The Directors, however, were opposed to any such plan of a general confederacy.

But the very audacity of the operations of the Pindharies demanded immediate steps to be taken. The Nawab of Bhopal, and many Rajput Rajas who had suffered most at the hands of the free-booters were anxious for British protection and at last towards the close of 1816 Lord Hastings got the tardy and qualified permission of the Directors to adopt measures for the final suppression of the Pindharies. The Pindhari War led to many ramifications and involved campaigns against the leading members of the Maratha Confederacy. As a result the Peshwa lost the whole of his dominion and the Bhonsle a part known as the Narbada and Saugor Territories.

The hostilities openly commenced by the Peshwa and the Bhonsle encouraged the army of Holkar to participate in the struggle against the English which had now become general. It was completely defeated in the battle of Mahidpur, and Malcolm, by the treaty of January 1818, deprived Holkar of his claims on the

Rajput Rajas, and put a stop to the disorders that had obtained at Indore since the death of Jaswantrao.

Malcolm was also successful in smoothing the relations of Holkar with Scindia, and of the latter with the English.

Deprived of the help they secretly derived from the Peshwa, Bhonsle, Holkar and Scindia, the Pindharis soon fell an easy victim to the English armies. Large bands of them were hunted down and done to death, and their leaders either submitted or perished in the jungles.

The pacification of Rajputana was left to be accomplished by Metcalfe and Colonel Todd. The tributes which the Rajput Rajas had to pay to Scindia or Holkar were transferred to the English, and protective treaties were made with the Rulers of Kotah, Jodhpur, Udepur, Bundi, and Jaipur. The Nizam of Hyderabad had to exchange territory belonging to the Peshwa, Holkar, and Scindia. Nor was the Gaikwar of Baroda left out of account in the comprehensive settlement made by the Governor-General. He, out of all the members of the Maratha Confederacy, was the most subservient to the Company ever since he espoused cause of Raghunathrao Peshwa in the First Maratha War. Constant disputes about succession further weakened his position, and when in 1817 the imbecile Anandrao died, a subsidiary treaty was made with his successor Sayajirao in 1820 by Elphinstone who was now the Governor of Bombay.

Review of Hasting's Policy.—It has been urged that the object of Lord Hastings in his treaties as well as military operations was purely defensive. He wished to protect the dominions of the Company and of its allies against the ravages of the Pindharies. He

himself distinctly repudiated any aggressive design on his part. He attributed the loss of territory which the Peshwa (wholly) and the Bhonsle (partially) had to suffer to persistence in folly on their part rather than to aggressive motives on his own. He wished to suppress the predatory system "without disturbing any of the established powers of India or adding a rood to the possessions of the British Government." Whatever value we attach to this plea of Lord Hastings there is no doubt that he merely reaped the fruit of the policy of Wellesley. The Native States, in the predicament to which they had been reduced by that policy, found themselves isolated and helpless and entirely at the mercy of the English. When, therefore, the campaign against the Pindharies inevitably reached the proportions of a general war, it brought, in its wake, a comprehensive scheme of reconstruction. It proceeded upon the principle that the British Power had become the suzerain power in India. The foreign relations of the Native Princes came under the surveillance of the paramount power which also made itself responsible for their military protection. Such was the work of Lord Hastings.

Extension of the Frontier.—The additions made to the possessions of the Company in North India—particularly the territories acquired from the Nawab Vazir of Oudh were bound to lead to disputes with the warlike inhabitants of the mountains that cut off India from the Asiatic Continent. One of the first States that thus became involved in a war with the English was that of Nepal. Its Officers had made frequent inroads into territories that belonged to the Company, and as every effort to define the jurisdiction in a peaceful manner failed war was declared in 1814. Partly

on account of the ignorance of geography, but mostly on account of the stern resistance of the Goorkhas, the losses suffered by the English were very heavy. But in the end the Nepalese Government was forced to yield a long strip of land along Himalayas extending from Nepal to the Sutlej River. "All the hilly country that overhangs Rohilkhand, Agra and Oudh was thus annexed and the British frontier pushed Northward till it touched Tibet."*

Disputes also arose on the Eastern frontier of the Bengal Presidency. Here the *Burmans* who had been almost simultaneously with the English, extending their power came in conflict with the latter. Lord Amherst had to declare war against the Court of Ava, which yielded to the Company the Arakan and Tenasarim Provinces. Thus the Eastern Frontier was also consolidated, becoming coterminous with, in course of time, with that of Tibet.

(12) BENTINCK AND THE NATIVE STATES

We have already considered how the subsidiary alliances were bound to produce a debilitating influence upon the Indian Princes. The steps which Bentinck—whose pacific motives are unimpeachable—had to take in the affairs of many States form an effective commentary upon this statement. At Hyderabad the reigning Nizam Shikander Jah died in 1829 and his successor was allowed a larger measure of independence. But on account of financial difficulties the payment for the subsidiary force fell into arrears. At last Berar was leased to the English in satisfaction of these long-standing claims. At Mysore a long period

* Lyall : page 263.

of mal-administration set in after the retirement of the able Dewan Purnea. Sir Thomas Munro visited the capital, the Maharaja was deposed, and the whole State was placed under direct British Administration which lasted till 1881. In Coorg the Raja, after indulging in murder of his near relatives, fled away from his capital. Bentinck happened to be at Ootacamund at the time. He marched four armies into that small principality and Mercara the capital was taken and the whole State was annexed. In Oudh also there was grave mismanagement. Bentinck visited Lucknow to remonstrate with the Nawab Vazir. There was no improvement, and, as will be soon mentioned, this kingdom had to be annexed. Even the tiny State of Kachar which suffered from the same evils of mal-administration was also annexed. The Rajput States of Jaipur and Jodhpur became the scenes of civil war and bloodshed. Sir Charles Metcalfe had to intervene in the case of Jaipur, and with his help a Regency established there under the eye of a British Resident.

Such was the tone of the Native States—be they big or small, ancient or modern, Hindu or Mahomedan, situated on the hills or in the plains. Each told the same story of an administration which was as rotten as it was irresponsible.

CHAPTER IV

SECOND PERIOD OF TERRITORIAL EXPANSION (1835—57)

(13) EXTENSION OF FOREIGN RELATIONS AND THE FIRST AFGHAN WAR

Lord Minto's Missions.—Napoleon with the help of his revolutionary armies conquered the whole of Central Europe, and made a common cause with the Czar of Russia by the treaty of Tilsit 1807. This friendship with Russia revived his ambitious plans with regard to the conquest of India. The two potentates agreed to lead an army through Western Asia against India, and Russian and French Agents were busy establishing friendly relations at the Courts of Persia and Afghanistan.

It was to counteract this new danger that Lord Minto sent out three 'Missions', one under Sir Charles Metcalfe to Ranjitsing, another under Mountstuart Elphinstone to the Amir of Afghanistan, and a third under Colonel (afterwards Sir John) Malcolm to the Shah of Persia. The Missions returned without achieving any striking results. The danger of a Franco-Russian invasion also vanished, for the two Emperors could not agree as to the share of each in the partition of Turkey and Napoleon himself was called away by events in Spain and Portugal, and there was peace in Central Asia for the next twenty years. But Lord Minto had clearly foreseen the danger of Russian aggression. He had also realised that the invading

enemy would probably pass through the kingdoms of Kabul and the Punjab as well as through the territories of the several independent Chiefs between Persia and India, and his policy was "to push forward a British Agency as far beyond the Indian frontier and as near the countries from which the enemy was likely to take his departure as possible."*

Commenting upon the significance of the three Missions, Lyall says that they extended the scope of Anglo-Indian diplomacy. Hitherto the English had confined their relations only with the Princes in India. "But now for the first time they entered upon that field of diplomacy in which all the countries of Western Asia, from Kabul to Constantinople, are surveyed as interposing barriers between Europe and their Indian possessions. The independence and integrity of these foreign and comparatively distant States are hence-forward essential for the balance of Asiatic powers and for the security of the Indian frontiers."†

Policy of Lord Auckland.—The danger of Russian invasion was renewed at the advance of Russian Agents to the Courts of Persia and Afghanistan during the regime of Lord Auckland.

The cardinal feature of the policy of Lord Auckland was to replace Dost Mahomed, the hostile occupant of the throne of Kabul, by a strong and friendly ruler, able to check the intrigues of the Russians. "The welfare of our possessions in the East requires that we should have on our Western Frontier an ally who is interested in resisting aggression, and establishing tranquility, in the place of

* "Lord Minto in India" (quoted in Ramsay Muir : 142)

† Lyall 245

Chiefs ranging themselves in subservience to a hostile power and seeking to promote schemes of conquest and aggrandizement.”*

A tripartite treaty was accordingly concluded in 1838 between the English, Ranjitsing, and Shah-Suja—the fugitive Amir for the elevation of the last to the Afghan throne with the help of the first two allies. But before the Sikhs could render any effective help in the enterprise Ranjitsing died (1839) and as permission was refused to the British Army to march through the Punjab, it had to resort to the more circuitous and dreary route through the deserts of Sind, and the progress of the army was rendered at all possible through the good offices of the Amirs of that region. At the advance of the English Army upon Kabul Dost Mahomed the Afghan Ruler fled and Shah-Suja was seated on the throne and it appeared as if the expedition was a great success. But the new ruler was unpopular the whole Afghan country was up in arms against the English army of occupation, the British envoy MacNaughton was killed and in the retreat of the army from Kabul practically the whole force perished with the single exception of Dr. Bryden.

But the hour of vengeance soon came. Lord Ellenborough who had succeeded Auckland, sent an army to Kabul in September 1842 and again the British flag was planted on Bala Hissar. At the same time the folly of Auckland's policy of forcing an unpopular ruler upon the unruly Afghans was realized, and they were left to themselves. Dost Mahomed returned to Kabul and thus was closed this first essay of the English in their frontier policy.

* *Persian and Afghan Correspondence* p 989 Quoted in Ramsay Muir

Annexation of Sind.—Reference must be made to one result that flowed from the First Afghan War. We have already seen how the Amirs of Sind had rendered valuable assistance to the English Army marching upon Kabul. The conciliatory attitude of the Amirs was wholly due to the tact of the English Agent in Sind—Major Outram. But in 1842 he was replaced by Sir Charles Napier—a haughty and querulous Officer.

He easily persuaded himself that the Amirs had acted treacherously in the Afghan War and without difficulty defeated them and annexed their territories—a policy in which Lord Ellenborough quietly acquiesced.

So unjustifiable was this step that even the Directors were dissatisfied with it, and Ellenborough was recalled after only two years of administration.

And Sir Charles Napier himself was not unconscious of his aggressive policy when, in announcing his victory to the Governor-General, he said "*Peccavi*" i. e., I have sinned (Sind).

(14) DALHOUSIE'S POLICY OF ANNEXATION

The Sikh Wars:—The history of the British dealings with the Punjab falls into three periods: The first period closes with the emergence of Ranjitsing; the second covers the reign of that great Ruler; and the third refers to the last years of that Power. It is not necessary to trace here the rise of the Sikh power prior to the days of Ranjitsing; but during his reign on account of internal administration and prudent foreign policy the Sikh power was thoroughly consolidated: the Sikh army particularly which was the mainstay of the State was trained into a formidable

machine by European Officers like—Ventura and Aitavale. Successive Governors-General, therefore, *e. g.*, Lord Minto and Lord William Bentinck maintained friendly relations with Ranjitsing whose state thus formed 'a buffer State' between the English possessions in North India and the Afghans. But the security of the N. W. Frontier was jeopardied by the disaster of the First Afghan War and the dissatisfaction that was seething in that country, and also by the anarchy that set in the Punjab after the death of Ranjitsing.

Sher Sing, the son of Ranjit, tried to keep the army under control ; but he was murdered in 1842 and the *Khalsa i. e.*, Sikh Commonwealth resolved to make war upon the English and crossed the Sutlej which was the boundary between the Powers. Not before four pitched battles had been fought in quick succession, was the Sikh power brought to submit. Lord Hardinge was opposed to any plan of annexation. "Once more the policy of leaving a Native State on the frontier was to be tried, and although the Sikh Kingdom could no longer be allowed to be independent, its internal sovereignty was to be left to it."* Accordingly only the country between the Sutlej and the Beas was annexed to British Dominions ; an indemnity of one crore and fifty lakhs of rupees was imposed upon the Sikhs and as it could not be paid, Kashmir was transferred to Gulab Singh, an ally of the English, for half the amount ; The Sikh army was reduced and a Council of Regency was appointed under Henry Lawrence, during the minority of Dulipsing, for the internal administration of the

Punjab, and a British force was sent to garrison the province for the term of eight years.

Policy of Lord Dalhousie.—Such was the state of the Punjab when Dalhousie arrived in India. There was prospect of a peaceful administration under the reforming zeal of the brother Lawrences. But suddenly the storm broke. Divan Moolraj, (the Governor of Multan) caused the assassination of two British officers and raised the standard of rebellion. The trouble spread over the whole of the Punjab, and even Dost Mahomed the Ruler of Afghanistan, who had not forgotten the wanton aggression of the English joined the Sikhs. The Sikh army though considerably smaller than in the first War was still unbroken, and only yielded after four bloody battles had been fought. Multan after a protracted siege also surrendered and the Afghans were driven beyond the Indus.

Annexation of the Punjab.—The Punjab now lay prostrate and the question again arose if it should be continued as a 'buffer' Native State though considerably reduced. But Lord Dalhousie was opposed to any such policy. He thought that on account of the proximity of the Afghans, and the widespread dissatisfaction in the Punjab, no Sikh power could be continued there, and as he felt assured of full support from the Home authorities in any course that he might adopt he annexed the whole province (1849). Maharaja Dulip Singh was pensioned off to England where he lived for many years as a country gentleman.

Annexation of Lower Burma.—Lord Dalhousie, three years later annexed Lower Burma as the result of a War waged on account of complaints that had been frequently made by British merchants trading at Rangoon about money unfairly exacted from them.

Doctrine of Lapse.—It was not by conquest only that Dalhousie extended the boundaries of British India. In his zeal to bring as large a part of India as possible within the pale of Western Civilization, he lost no opportunity of adding to the British possessions and he found in his 'Doctrine of Lapse' a powerful weapon for territorial aggrandizement. As he himself said: "I take occasion of recording my strong and deliberate opinion that, in the exercise of a wise and sound policy, the British Government is bound not to put aside or neglect such rightful opportunities of acquiring territory or revenue, as may from time to time present themselves, whether they arise from the lapse of subordinate states, by the failure of all the heirs of every description whatsoever, or from the failure of heirs natural, where the succession can be sustained only by the sanction of the Government being given to the ceremony of adoption according to Hindu Law."

This is the Doctrine of Lapse. Now the ancient law of India allows a Hindu to adopt a son, on the failure of natural heir, and law treats equally the adopted and the natural heir. This right had been recognized by the Mogul Emperors; and even under the Peshwas it was in full operation though it is true that the Peshwas, as overlords, charged heavy *Nazarana* or succession duty, at the time of issuing the *Sanad* or title to adopt the heir, but in no case had they denied the right or annexed the territories of their Jagirdars on the ground of failure of heir.

But upon the settlement of Central India after the Pindhari War, British Government began the practice of refusing sanction to adoption, as in the case of the Angria family of Kolaba in 1840. But such cases

were rare. It was reserved for Lord Dalhousie to adopt this course systematically.

The States that fell victim to this policy of annexation were Satara (where the claims of the adopted heir after the death of the Raja in 1848 were set aside); Sambalpur in the Central Provinces (where the Raja had died childless, without adopting an heir; Jhansi (where the rights of the adopted son of the dying Raja were not recognized); and finally Nagpur (where the heir adopted by the widow of the deceased Raja was set aside).

The policy of annexation followed in the smaller States of Beghat, Udepur, and Karauli, was practically reversed by Lord Canning, and even Lee-Warner admits 'that the case of Karauli must always be considered as the least justifiable of the measures taken by Dalhousie.'*

It would be out of place to enter into the general question of this Doctrine of Lapse or to examine each case separately. The error of Dalhousie lay in systematically applying a right (*i.e.*, of refusing sanction) which though existing in theory, was never exercised in practice. Though the Indian Mutiny was not caused by this policy of Lord Dalhousie, some of its implacable leaders were those who had suffered by this Doctrine. By the reversal of Dalhousie's decisions in two or three minor cases, and by the solemn recognition of the right of adoption given in the Queen's Proclamation after the Mutiny, this avenue at any rate of extending the British Territories was finally closed.

Further annexations.—In addition to annexation by conquest and by lapse, Dalhousie added Oudh (1856)

* Lee-Warner Volume II, page 171

on the ground of the protracted state of misgovernment that prevailed there; and he took Berar from the Nizam on lease, as a guarantee of payment of the long-standing arrears on account of the subsidiary force.

(15) REVIEW OF RELATIONS WITH INDIAN STATES UP TO 1857

Sir William Lee-Warner distinguishes three periods in the development of these relations: (1) the period of 'ring-fence' extending to 1813; (2) that of 'subordinate isolation' which lasted till 1857 and (3) of 'subordinate union' which set in after the Mutiny. The essential element of the policy of the "ring-fence" was the refusal of protection to Native States lying beyond a certain limit, or, in another words, the avoidance of all ties or engagements which might possibly drag the Company beyond its own frontiers. This policy led to confusion and anarchy beyond the ring-fence and Lord Hastings broke down ring-fence and filled in the map of India with "protected" States. He deprived them of all external relations but at the same time he rightly marked off the internal administration of each Prince as outside the sphere of British action. This policy is called that of 'subordinate isolation' and was followed by his successors and was in vogue when Lord Dalhousie came out to India. Dalhousie was bent upon "getting rid of these petty intervening principalities which may be made a means of annoyance, but which can never be a source of strength for adding to the resources of the public treasury, and for extending the uniform application of our system of Government to those whose best

interests, we sincerely believe, will be promoted thereby."

What the result of the policy of Dalhousie was and how it was reversed after the Mutiny has been already shown. The Queen of England promised to make no more territorial aggrandizement.

In spite of cases of misgovernment, the value of the Native States was appreciated by some of the best administrators of India of the period (1800-1850). *e.g.* Sir Thomas Munro and Sir John Malcolm.

The States afford scope to native talent and industry; they extend patronage to indigenous art and literature; they preserve traditional civilization and culture and make for that variety without which rule in British India would be oppressively monotonous; they also serve as foil to British rule. Views like these triumphed after the great conflagration of the Mutiny and few now question the wisdom of preserving the Native States or deny the very important part which they may play in the progress of India as a whole. At any rate I am personally a great believer in the possibilities of the Native States.

CHAPTER V

ADMINISTRATION OF INDIA UNDER THE E. I. COMPANY

Having considered in the last two Chapters the course of the expansion of British Dominions in India, it will be appropriate now to review the results of the Administration of India by the East India Company, or "John Company" as it was called in derision by its opponents. The Company increasingly assumed a political complexion and after 1833 altogether ceased to be a commercial body. The present Chapter is divided into two Sections. The first deals with the principal Land Revenue Settlements made during the regime of the E. I. Company. The second Section gives a brief account of the State of Finance, Public Works, Education and the Public Services during this period. In the next Chapter will be considered the contribution made to the liberalization of Indian administration by some of the great servants of the E. I. Company.

SECTION ONE

HISTORY OF THE LAND REVENUE
SETTLEMENTS

Every acquisition of new territory entailed the establishment of a system of administration therein, and the chief object of administration was the collection of land-revenue. During the whole regime of the Company land revenue was the main prop of Indian Finance. Also the collection of land revenue has always been the primary duty of every Indian Ruler. We must, therefore, carefully examine the various systems of Land Revenue Settlements in Bengal, Madras, Bombay, the North-West Provinces, the Punjab and the Central Provinces.

(16) THE PERMANENT SETTLEMENT OF CORNWALLIS

Reference has been made (§§ 4, 5) to the experiments in land revenue collection made by the President and Council of Calcutta since the acquisition of Dewani in 1765, and to the reforms of Warren Hastings. The impoverished condition of the Ryots and Zamindars of Bengal as well as the general policy of Warren Hastings attracted great attention in England, and when Parliament passed the Act of 1784 it laid down definite reforms to be carried by the new Governor-General *viz.*, Lord Cornwallis. The most important of the duties was the making of an inquiry into the injustice done to the Rajas, Zamindars, and other land-holders of Bengal, and "the settling, upon principles of moderation and justice, according to the laws and constitution of India, the *permanent* rules by which their tributes, rents, and services shall be in future rendered and paid to the Company "

(16) PERMANENT SETTLEMENT OF CORNWALLIS 77

The first part of this duty namely the inquiry, was most admirably performed by Sir John Shore and embodied in his Minute of 18th June 1789. Lord Cornwallis, who had no previous knowledge of India, guided himself entirely by the advice of Sir John Shore, and the declared view of the Directors "that a *moderate permanent* assessment was more beneficial both to the State and to the people than a heavy fluctuating one, and that it should be made with the Zamindars."

To revert to the state of things which prevailed at the time of the departure of Warren Hastings: the Collectors had been again appointed and they were rigidly controlled by the Committee of Revenue at Calcutta; the settlement was annually made, and lands were let out to the highest bidder.

The first step in the direction of reform was taken in April 1786 when the shifting *parganas* and *chaklas* were permanently grouped into compact districts, each under a Collector. Full trust was now placed in this officer; the Zamindars were to look up to him for a fair assessment of revenue; the Committee of Revenue at Calcutta were to look up to him for information. The establishment of the Collector as the chief authority in the district, charged with its revenue collection and general administration is the basis of all subsequent administration throughout India.

In June 1786 the Committee of Revenue was reconstituted as Board of Revenue for the general supervision and control of the fiscal operations of the Collectors.

The ground was now prepared for the great reform of Lord Cornwallis.

Three questions were raised:

(a) With whom was the settlement to be made?

78 (16) PERMANENT SETTLEMENT OF CORNWALLIS

(b) On what basis was the assessment to be made?

(c) What was to be the length of that Settlement?

(a) With regard to the first question, Sir John Shore pointed out that there were three possible alternatives. The Settlement could be made directly with the ryots; it could be made with any persons chosen by the Company for that purpose, who undertook to pay the revenue; or it could be made with the Zamindars. Now in the state of Bengal at that time a settlement with the ryots was inconceivable; and the mischievous and disastrous results of the second method of farming out revenue were so patent that that method also was equally out of question. It was then decided to make a settlement with the Zamindars.

The question immediately arose as to the status and rights of the Zamindars. One extreme view on this subject was that held by James Grant—an able servant of the Company at that time—who maintained that the Zamindar was merely a temporary official, and that the property in land vested absolutely in the State. Opposed to this was the view of Sir John Shore (also shared by Lord Cornwallis) that the proprietary right in land belonged to the Zamindar. "The rents belong to the sovereign; the land to the Zamindar." Sir John thus defined the right of the Zamindars: "I consider the Zamindars as the proprietors of the soil, to the property of which they succeed by the right of inheritance, according to the laws of their own religion, and the sovereign authority cannot justly exercise the power of depriving them of succession, nor of altering it when there are any legal heirs. The privilege of disposing the land by sale or mortgage is derived from this fundamental right and

was exercised by the Zamindars before we acquired the Diwani”.

(b) Next as to the Principle of Assessment. Here also James Grant and Sir John held opposite views. The former was of opinion that it should be based upon the highest Mogul assessment as it was prior to 1765 (that is before the grant of Diwani); but there were obvious practical difficulties in adopting this standard. Sir John Shore, therefore, took the assessments as they were being actually made during the few years preceding the Permanent Settlement. In the absence of detailed information, it was fixed upon arbitrary grounds, and was fixed as high as possible, in view of its being declared to be permanent.

(c) Finally, with regard to the period of Settlement, there was difference of opinion between Sir John Shore and Lord Cornwallis. The former held that the Settlement should be made initially for a period of ten years. He was opposed to an *immediate* permanent settlement on the ground that the requisite data for such a settlement were lacking. But Lord Cornwallis was so much anxious to give a sense of security to the Zamindars against increase of assessment, that he declared the Settlement made in 1789 permanent, provided only the sanction of the Directors was obtained, which was done within two years. Thus the very first Regulation of 1793 embodied the Permanent Settlement of Bengal.

Criticism.—The most diverse views have been expressed with regard to the merits of the Permanent Settlement. A typically adverse view is that of the biographer of Cornwallis, Mr. Seton Karr. The circumstance that he belonged to the Bombay Service where the *Rayatwari* system prevails possibly

80 (16) PERMANENT SETTLEMENT OF CORNWALLIS

accounts for the adverse judgment of Mr. Seton Karr.

“Lord Cornwallis had only the experiments and the legacies of failure to guide him. Pressed for ways and means and anxious for reforms in more departments than one, he committed himself to a policy which in regard to the three interested parties, the Zamindar, the Ryot and the Ruling Power—assured the welfare of the first, somewhat postponed the claims of the second, and sacrificed the increment of the third.”

On the other hand, a very high authority on land revenue administration—the late Mr. R. C. Dutt,—characterised the measure as one that “has done more to secure the prosperity and happiness of British subjects in India than any other single measure of the British Government.”

A complete discussion of and final judgment upon the Permanent Settlement would involve reference to controversial economic theory which is out of place in a text-book on Administration. But there is no doubt that the class that benefited most by the measure of Cornwallis was that of the Zamindars. Though their share of the rental at the time of the settlement was only 1/10th of the gross rental, competent authorities now reckon it at 75 p. c. of the rental, Government getting only 25 p. c. as land revenue. It was the expectation of Lord Cornwallis that the Zamindars would devote an increasing share of their wealth to the improvement of land. But the general opinion is that they have not improved the land to any considerable extent; but it has to be admitted that the wider

* Dutt : Early British Rule, p 9

diffusion of education and the cultivation of literature and art, which we find in Bengal are to be traced to the wealthy and leisured class of Zamindars of that province.

The condition of the ryots changed for the worse, rather than improved, for some years after the Permanent Settlement; for though the State had fixed for ever its own demand on the Zamindars, the latter could take as much as they liked from their tenants. A whole series of laws—known as Tenancy Acts—had to be passed before the advantages of the Settlement reached the ryots. But even with this reservation it is worth while referring here to the testimony of Sir John Malcolm who said “I must ever think it (the Permanent Settlement), one of the most wise and benevolent plans that ever was conceived by Government to render its subjects rich and comfortable.”

That the Permanent Settlement has entailed upon the State an enormous loss of revenue, cannot be gainsaid. It is no answer to this criticism to say that the State can compensate itself for the loss of land revenue of a particular Province by overtaxing other Provinces, or interests other than agriculture in the same Province. It was this loss of revenue that disposed the authorities in England to look askance at the Permanent Settlement. They opposed its extension to other Provinces of India and after a controversy that raged for more than three quarters of a century, rejected it altogether. A word will be said about this controversy at a later stage.

(17) LAND SETTLEMENT IN MADRAS

Condition of the Karnatic.—The protracted struggle between the English and the French had told heavily

upon the condition of the cultivators and the Nawab of Karnatic was a mere puppet in the hands of the Madras Council. He had borrowed extensively from the servants of the Company and made assignments of land-revenue to his British money-lenders who, to recoup themselves, extorted as much money from the people as possible. The misery of the people was increased by the wars with Hyder and Tipu.

To turn next to the condition of the *Northern Sarkars*.—After the acquisition of these Sarkars, a Committee of Circuit was appointed in 1775 as in Bengal to inquire into the condition of these Districts and its enquiries lasted till 1788. It appeared that the lands were principally held by Zamindars who were the descendants of the ancient Hindu Rajas who paid a fixed tribute to the Mahomedan Government. Besides these Zamindars there were certain demesne or household lands of Government known as *Haveli* lands, which, after division into suitable lots were granted out to agents. Both in Zamindari and *Haveli* territories there existed Village Communities.

With the Zamindars short settlements were made from time to time; the Company's Chief and Council were abolished and Collectors under the control of the Board of Revenue were appointed in 1794, as they had been appointed in Bengal in 1786. By that time the Permanent Settlement had been made in Bengal and it was extended to the Sarkars between 1802-1805 during the regime of Lord Clive, the son of the Victor of Plassey. The *Haveli* lands also were parcelled out into blocks and sold by auction as Permanent Zamindari Estates between 1812-14.

But this Permanent Zamindari Settlement was confined to the Northern Sarkars alone. When in 1792

the *Baramahals* were taken from Tipu, their administration was entrusted to a group of soldiers headed by Captain Read. One of his assistants was the celebrated Thomas Munro whose name is associated with the Revenue Settlement of Madras, known as the Rayatwari Settlement.

From Baramahal, Munro was transferred to the large tract between the Krishna and the Tungabadra known as the "Ceded Districts." It was here that during seven long years (1800-1807) Munro perfected himself in the intricate work of making settlements directly with the ryots in an extensive area. In an elaborate Minute submitted to the Board of Revenue, he thus described the principles of the Rayatwari Settlement:

- (1) the Settlement should be made with the *Ryot*.
- (2) every ryot should be at liberty, at the end of every year, either to throw up a part of his land, or to occupy more, according to his circumstances.
- (3) the amount of Settlement should increase or decrease annually according to the increase or decrease in the extent of land which the ryot may have brought under cultivation.
- (4) every ryot as long as he pays the rent of his land, should be considered as the complete owner of the soil, and should be at liberty to let it to a tenant, without any hesitation as to rent, and to sell it as he pleases.
- (5) no remission to be made, on ordinary occasion, for bad crops or for other accidents.
- (6) all unoccupied land should remain in the hands of Government

- (7) Patil, Curnums and other village servants should remain, as heretofore, under the Collector.”*

As the then existing assessments were very high, Munro also proposed that there should be a reduction of 25 p. c. in the survey-rate of assessment on all lands and an additional reduction of 8 p. c. (*i. e.* a total reduction of 33 p. c.) on all lands watered by wells, tanks &c. Thus reduced the assessment was to be declared permanent. But the Madras Board of Revenue did not approve this Settlement. They called it an Herculean task, or rather a visionary project, to fix a land rent—not on each province, district, or village, nor on each estate or farm, but on every separate field in the dominion. They further referred to the tendency of such a settlement ‘to dissolve the ancient tie which united the republic of each Hindu village’ and to the certainty of its practically abolishing private property in land. In the place of the Rayatwari, they adopted in those districts where no Settlement had yet been made the *Village* or *Mahalwari* Settlement. “It differed from the Rayatwari chiefly in the assessment being fixed on the entire aggregate lands of the village, not on each distinct and separate field, in its being concluded with all the ryots collectively, not with each individually; and in its giving up to the ryots not only the revenues to be derived from the arable land, but that also to be obtained by after exertion from the waste also; in fact, in leaving, in consideration of a contract to pay a given sum as public revenue, the entire internal administration of affairs to the Village Community. The object of this Settlement

* Kaye 219 90 condensed.

was to adapt the revenue administration to the ancient institutions and ancient usages of the country to which the Hindus are proverbially attached; to suit the system to the people and not to attempt to bend the people to the system.”*

It will thus be seen that there were at this time three distinct revenue Systems in Madras: the Permanent Zamindari System in the Northern Sarkars; the Rayatwari System as made by Thomas Munro in Malabar, Canara, Coimbatore, Madura, Dindigul; and the Village System as made by the Board of Revenue at Madras in the Ceded Districts, in Nellore, Arcot, Palnad, Trichinopoly, Tinnevely, and Tanjore.

“For a quarter of a century now under the Madras Government a series of experiments in land revenue had been going on. One system had been displaced to make way for another; each had been tried in turn, and it was alleged that in turn each had failed. They had all failed, more or less, because the lands had been overassessed.”†

The final decision of the Court of Directors to adopt the Rayatwari Settlement was undoubtedly due to the influence exercised on them by Sir Thomas Munro who had gone to England in 1807. At the same time they realized how the land had suffered under over-assessment. When, therefore, Munro returned to India a second time as the Governor of Madras, he was authorized to adopt the Rayatwari Settlement and he made a general reduction of from 25 to 33 p. c. of the original assessment.

The extension of the Rayatwari Settlement in Madras involved the partial or complete wiping out of large classes of landlords who occupied positions

corresponding to the Zamindars of Bengal. Thus the hereditary Rajas and Nair Chiefs of the Malabar District; the Zamindars—known as Pattackdars—in the kingdom of Tanjore annexed by Lord Wellesley; and finally the class of Polygars in the Karnatak after its annexation in 1801, were swept aside. In the last case the Polygars—who were always a military and turbulent class—rose into insurrection but were ruthlessly put down, most of them were deprived of their land, and after 1803, Permanent Settlement was made with such of them as had survived the late harsh treatment. But in greater part of the Karnatic, Settlement was made directly with the cultivators.

Not only were the different orders of society reduced to the same level, the Settlement also gave the death-blow to the Village Communities. Though Sir Thomas Munro did all he could to foster them, organized the Panchayats, and revived their judicial powers, this ancient institution declined under the pressure of British Administration.

It should also be noted that an essential feature of the Rayatwari Settlement as conceived by Munro—namely, the permanency of assessment—was not accepted by the Court of Directors. The result was that the Madras ryots steadily deteriorated after the departure of Munro; there were reports of the use of torture for the exaction of assessment; and a debate was raised in the House of Commons in 1854 in which John Bright gave a very harrowing picture of the condition of the Madras ryots. A revision of the Settlement was, therefore, ordered in 1855 with a view to moderate the demand of the State, and safeguard the interests of the ryots.

(18) RAYATWARI SETTLEMENT IN BOMBAY

Elphinstone's Proposals.—Elphinstone was appointed Commissioner of the Deccan in 1818 to settle the country of the Peshwa. His '*Report on the Territories conquered from the Peshwa*' is a historical document. He showed how Village Communities were to be found everywhere in the Deccan and described minutely their constitution and internal economy. He distinguished between two kinds of cultivators in the Deccan: those who were proprietors of the soil and those who were more or less tenants-at-will. Pointing to the large class of peasant-proprietors of the first kind known as *Mirasadars*, he said "They are proprietors of their estates subject to the payment of a fixed land-tax to Government; their property is hereditary and saleable and they are never dispossessed while they pay their tax and in case of inability, they have for a long period (thirty years) the right of reclaiming their estates on paying the dues of Government." The other class is that of *Upari* cultivators. Elphinstone also referred to the valuable work of the Village Panchayats and urged that for the pacification and improvement of the country "our principal instrument must continue to be the Panchayat, and that must continue to be exempt from all new forms, interference, and regulation on our part."

When Elphinstone became Governor in 1819, Chaplin was appointed Commissioner and his report on the condition of the Deccan is also equally valuable. Elphinstone's idea was to preserve whatever was valuable and useful in the institutions of the Deccan. His proposal was to settle, after a survey, what each cultivator should pay to the State, and then to realize this from each village through the Patil. By this

means he wished at once to preserve the Village Community as symbolized by the Patil and at the same time to safeguard the fiscal interests of the State. But herein lay the weakness of his proposal. If the share of each cultivator was to be determined by the officers of Government, what was the necessity of keeping up the Patil and the Village Council thus deprived of their most important function of distributing the collective assessment among the cultivators? This weak point was too obvious to escape the notice of the Directors, and they rejected Elphinstone's proposals.

To the ruinous effect of excessive demand of the State testimony is borne by the report of Dr. Francis Buchanan who travelled extensively throughout India and by the Journal of Bishop Heber who made a tour in 1824-25-26.

Settlement Operations.—A preliminary Settlement Survey was commenced by Pringle (1824-28). It was based upon Government share being fixed at 55 per cent. of the net produce of the land. By the 'net produce' was meant the gross produce of a field *minus* the cost of cultivation. Though the principle was sound, it was not properly applied and a fresh survey was undertaken in 1835 by Goldsmidt and Lieutenant Wingate. It proceeded on the simple expedient of ascertaining the average character and depth of the soil, in each field, and classifying it accordingly. This principle based upon the geological examination of the soil, though defective in theory, was applied with moderation by Wingate: The results of this Settlement are embodied in the Joint Report of 2nd May 1847 of Goldsmidt, Capt. Wingate and Capt. Davidson. It explained the principle thus: *firstly*, it was based

upon the assessment of each field separately, and not on holdings or villages collectively; *secondly*, it granted long leases for thirty years instead of the short leases which had preceded; and *thirdly*, it abandoned the basis of produce estimate and substituted the estimated value of lands (from the point of view of depth and colour of soil) as the basis of assessment. Lands were classified according to their depth (which determines the power of imbibing and retaining moisture) and also according to colour and texture. The land of first order was of fine uniform texture, varying in colour, from deep black to dark brown; of second order, of uniform but coarser texture and lighter in colour than the preceding order; third order of land of coarse, gravelly and loose friable texture and colour varying from light brown to grey. The resultant value of land was expressed in terms of annas per rupee.

The demand for the whole District was arbitrarily fixed 'from the past history of the District,' and this was distributed among the fields according to the relative values as determined above. The cultivator had no voice in determining the demand and he was entirely at the mercy of the petty survey officials.

The country suffered great hardships; the village communities declined; the landed aristocracy disappeared. The results were exactly similar to those that were observed in the case of Madras. A reduction of assessment was ordered and 'the revision' was going on at the time when the Company's administration came to a close.

90 (19) LAND SETTLEMENTS IN N.-W. PROVINCE

(19) LAND SETTLEMENTS IN THE NORTH-WEST PROVINCE

First Settlements.—The North-West Province was formed in four stages :

1775—Annexation of Benares and adjoining territory by Warren Hastings.

1801—The 'Ceded Districts' from the Nawab of Oudh, acquired by Wellesley.

1803—The 'Conquered Districts'—the territory between the Ganges and the Jumna, after the Maratha War.

1856—Annexation of Oudh by Lord Dalhousie.

In 1795 Sir John Shore extended to Benares the Permanent Zamindari Settlement and also the Bengal Code.

Immediately after acquisition of the Ceded Districts Marquis Wellesley appointed a Commission of three civilians, and his brother Henry Wellesley as the Lieutenant-Governor and President of the Board. Regarding the settlement of Land Revenue, it was proposed to have two triennial settlements to be followed by a settlement which after a further period of four years was to be declared *permanent*. Thus the Government pledged itself, in a most solemn manner, and as a result of their own Regulations, to a Permanent Settlement after an aggregate period of ten years from the first Settlement of Henry Wellesley in the Ceded Districts. A similar pledge was also given to the land-holders in the Conquered Districts.

On account of the preliminary settlements which were always most exacting, and as a result of the ravages of the Maratha War a terrible famine visited the Ceded and Conquered Districts in 1804 and a

Commission of R. W. Cox and Henry St. John Tucker was appointed to go into the question of the impending settlement, and this Commission was the first to sound a note of warning against a permanent settlement; they said "We submit to Your Lordship in Council our deliberate and unqualified opinion that the measure, considered with relation to the Ceded and Conquered Provinces generally, is at this moment unseasonable, and that any premature attempt to introduce it must necessarily be attended with a material sacrifice of the public resources, and may, in particular cases, prove injurious to the parties themselves, whose prosperity, it is the chief object of the measure to secure upon a durable foundation."

Lord Minto, however, and the members of his Council felt otherwise and they pressed the necessity of a permanent settlement upon the Court of Directors. But the warning of the special Commission was not lost upon the Directors and they in their Despatch of 27th November 1811 wrote "the object of the present despatch is to caution you in the most pointed manner against pledging us to the extension of the Bengal fixed assessment to our newly acquired territories."

Protests were made by Lord Minto, and by Lord Hastings against the injustice of this order. But the Directors were firm as adamant. In their final Despatch of August 1821, they required the Government not only to abstain from making a permanent settlement but "from taking any measure which may raise the expectation that a settlement in perpetuity will hereafter be formed."

Meanwhile short settlements were made with proprietors and pseudo-proprietors and on the whole the old landlords suffered great hardships and losses.

John Briggs' criticism of the early Land Policy of the Company.—From this brief account of the land settlements of Bengal, Madras, Bombay and the early land settlements in the N.-W. Province, it is evident that the theory underlying each was that the State was the *owner* of the land and was entitled to receive all the surplus produce of the land after the bare needs of the actual cultivators had been satisfied. Hence the narrow margin of profits left to the Zamindars, the frequency of settlements and the high pitch of assessment. The system of State land-lordism was the only one with which the British administrators were familiar in their own country. They, therefore, argued that the State was entitled to appropriate the whole of the 'economic' rent of land. This was represented, in theory, by the difference between the gross produce on a field and its cost of production. This theory of State land-lordism and its corollary of the State claiming the whole of the economic rent were accepted by John Stuart Mill, who, on account of his position in the India Office as the Examiner of Correspondence, was able to exercise a decisive influence on the policy of Indian Land Revenue. He maintained that "if the land tax were limited to the rent only, then the revenue system of India would be the best in the world".

The most emphatic protest against this view of the Indian Land Revenue as rent was raised by Lieut.-General John Briggs—the well-known translator of *Ferishta*, and also a great historian, and administrator. He had excellent opportunities of studying first hand this question of land revenue. His monumental work on "*The Present Land-Tax in India*" was published in 1830. Its main conclusions were (1) that the

integrity of *private* property in land had been recognized in every Village in India: (2) that Government had no right whatever to the land, but to a share in its produce, that is to a tax, which did not affect the proprietary rights in land; (3) that the Government share or tax was defined and limited both by Hindoo and Mahomedan Law and the Government had no title or precedents (except revolutionary ones) for taxing the people at discretion and no more right to claim the property in land and take its 'rent' than a tithe-owner has to claim another man's property because it pays him tithe; (4) that the Native institutions *e.g.* Village Communities themselves afforded a broad basis for the Administration, on which a durable Empire could be established".*

Summarising the defects of the theory on which the Company proceeded he said "Having assumed that the Government is the sole landlord, it considers the land to be the most profitable source of all revenue; it employs a host of public servants to superintend the cultivation, and it professes to take all the profits. A land tax like that which now exists in India, professing to absorb the whole of the landlord's rent, was never known under any Government in Europe or Asia."

The Mahakwari Settlement.—Brigg's work produced a strong impression upon Bentinck. He drew up a series of Regulations which were sent to General Briggs who was at that time Resident at Nagpur, and they were the foundation of the new settlement in North-West Province. In his extensive tour in North India Lord William Bentinck was struck by the fatal weakness of the Regulation of 1822 namely its

exorbitant demand of 80 p. c. of the rental. He immediately reduced it to 67. p. c. He also tried to preserve the integrity of the Village Communities in whose behalf Sir Charles Metcalfe had recorded his eloquent Minute of 1830.

The principles of Bentinck's Settlement were embodied in Regulation IX of 1833. The task of applying this Regulation in practice fell upon Robert Mertins Bird who laboured from 1833 to 1843 and whose name is as much famous in the North-West Province as that of Munro is in Madras. Bird's settlement operations were completed by James Thomason who afterwards became the Lieut-Governor of that Province. His "*Directions for Settlement Officers*" was the first complete Code of Settlement compiled in India.

The first step of this settlement was "to introduce a scientific survey of the country, to mark carefully and to record the boundaries of every village, to register the separate possessions, rights, and privileges, and responsibilities of those communities who hold their lands in severalty and of the several interests of those who hold their land in common"* The student will at once recognise here what have now become the familiar operations of a modern Land Revenue Settlement: a scientific survey of the tract: a cadastral or field-to-field survey with a view to ascertaining soil, produce &c., and finally the preparation of a Record of Rights.

James Thomason thus explained the underlying principles of Revenue Settlement:—

"It is the true interest of the Government to limit the demand to what is just, so as to create a valuable

property in the land and encourage its improvement. In order further to encourage this improvement, it is necessary to determine the persons to whom all the benefits belong, which arise out of the limitation of the demand on land. To perform these operations is to make a settlement. Under ordinary circumstances, the prosperity of the country depends on this being justly and perfectly done."

There are evidently two distinct operations in the formation of a Settlement. The one is fiscal, the determination of the Government demand—the other is judicial, the formation of the Record of Rights.

It will be observed that there were in the N.-W. Province as many as three classes of persons whose rights in land had to be carefully defined and safeguarded: *the tenants* (of either peasant-proprietors, village-communities, or large land-owners); *the Village Communities*; and thirdly, *the Talukdars*. Thomason recognized the rights—though they were inferior, such as the right of occupancy, protection against enhancement of rent &c.—of the ryots. As for the Village Communities, he endeavoured to maintain them intact by making them jointly or collectively responsible for the payment of the Government demand. He thus explained the advantage of collective responsibility thrown upon the Village Community. "It greatly promotes Self-Government, and renders unnecessary that constant interference with the affairs of individual cultivators on the part of Government officers, which must otherwise exist. It saves them from much expense which would otherwise fall upon them, and it facilitates their union for many purposes of municipal economy, which could not otherwise be effected. The efforts of the prosper

ous and industrious members of community will often be directed to stimulate the idle, to assist the unfortunate, and to give additional value to the labours of their thrifty brethren. Property being minutely divided, and each proprietor clinging with the greatest tenacity to his patrimony, it would be difficult to devise a civil institution better calculated to add to the happiness and prosperity of the people.”*

Finally as to the *Talukdars*. Originally majority of them were farmers or collectors of revenue. But they had succeeded in many cases in depriving the village community of its proprietary rights and reducing it to the position of their tenants. Under these circumstances the Talukdar was virtually the proprietor of the village. In each case Thomason endeavoured to preserve the *status quo*, recognizing the rights of the Community or the Talukdar according to the result of a judicial enquiry. The Talukdar was allowed a certain percentage (about 20%) of the revenue that was collected through him.

Such were the principles of the *Mahalwari Settlement* as established in the N.-W. Provinces by Bird and Thomason.

Bird had intended to fix the assessment for ever in those parts of the province where cultivation had reached the maximum limit. But this intention was disregarded. Again, the Village Patwari—a paid agent—was invested with powers that ought to have belonged to the Village Community; the inevitable result of these two measures was the gradual impoverishment of the ryots and the disruption of the Village Community. As has been well said “The decidedly levelling character calculated so to flatten

the whole surface of society as eventually to leave little of distinguishable eminence between the Ruling Power and the cultivators of the soil" was not checked.

The completed settlement was approved of by the Directors in their Despatch of August 13, 1851. But it was soon found that the demand of State fixed at $\frac{2}{3}$ of the net assets (*i. e.* the surplus which the estate may yield, after deducing the expenses of cultivation including the profits of stock and wages of labour) was excessive, and therefore when the resettlement of the province commenced with the Shaharanpur District, the State demand was revised by fixing it at 50 per cent of the assets—by the famous Shaharanpur Rule.

In Oudh which was annexed by Lord Dalhousie there was a powerful class of Talukdars. Settlements, were made with them rather than with their tenants. Lord Canning after the pacification of the Mutiny recognized the proprietary rights of the Talukdars and this virtually established the Talukdari Settlement in Oudh.

(20) VILLAGE SETTLEMENT IN THE PUNJAB

History of the Settlement.—A part of the Punjab was annexed as the result of the First and the whole of it as a result of the Second Sikh War (1849). Under the rule of Ranjit Sing, the land tax was theoretically one half of the produce of land; it was collected in kind by powerful military Governors in the more distant and unruly parts of his empire, and by Agents in the more peaceful or settled districts. The system rested on the acknowledgment of private proprietary

right in the land and on the existence of village communities.

At the suggestion of Henry Lawrence the produce tax was converted into money. After the annexation, a Board was appointed with Henry Lawrence as President and John Lawrence as a Member. But as the policy and temperament of the two brothers could not agree, both resigned and Lord Dalhousie, who fell in with the Imperial ideas and narrow views of John Lawrence, made him the President. Under his direction the Village Communities were practically ignored. The Government share was reduced from $\frac{1}{3}$ to $\frac{1}{4}$ and then to $\frac{1}{8}$ of the gross produce of land or to one half of the net rental.

Mill's Description of the Settlement.—The general nature of this settlement has been well described by John Stuart Mill in a paper submitted to Parliament in 1857.

"In the Punjab one and the same man is usually the absolute proprietor and generally the sole cultivator, though he may occasionally lease out a few acres to tenants. He is saddled with no rent. But these men, well maintaining their individuality, do yet belong to the Village Communities. A village is not inhabited by a certain number of ryots each unconnected with the other, but by a number of persons of common descent, forming one large cousinhood, having their own headman and accustomed to joint action and mutual support.

The British Government has from the first decided on levying the tax by money payments assessed for a number of years. The peasant proprietors compound with the State for a fixed period, such assessment and compounding being technically called

(21) SETTLEMENT IN CENTRAL PROVINCES 99

Settlement. But the Proprietors do not individually engage with the Government, but by villages. The brotherhood, through its headmen or representatives, undertakes to pay so much for so many years; and then, having done this, they divide the amount among themselves assigning to each man his quota. Primarily each man cultivates and pays for himself but ultimately he is responsible for its coparceners and they for him and they are bound together by a joint liability. The Punjab system, therefore, is not Rayatwari, nor Zamindari, but the *Village System*.

(21) MALGUZARI SETTLEMENT IN THE CENTRAL PROVINCES

The C. P. were formed at different times. The Raja of Nagpur ceded the Sagar and Nerbada Territories in 1817 after the Third Maratha War. In 1849 Lord Dalhousie annexed the State of Sambalpur as the Raja died without an heir; and in 1853 the whole of the territories of the Raja of Nagpur was annexed as the claims of the adopted son were set aside. All the tracts were placed under the Chief Commissioner of Central Provinces in 1861 by Lord Canning.

The Sagar and Nerbada Territory suffered so much under excessive and frequent settlements that in 1834 Robert Mertins Bird was appointed to make a special report and as a result of this a twenty years' settlement was made in that year. Short term settlements were made in Nagpur and Sambalpur after their acquisition, but it was not till 1861 that a proper settlement was made. Sir Richard Temple—who had been an assistant of Thomason and Lawrence—was in favour of a Permanent Settlement which he argued was good both for the subjects and

the State. The latter would be compensated for the loss of its prospective land revenue by the gradual increase of other branches of revenue. These branches entirely depended upon the wealth of the people and nothing contributed so much to augment that wealth as a Permanent Settlement.

But while this question was being debated, a new settlement was begun in 1863 of which the chief feature was the recognition of the rights of *Malguzars*. The *Malguzars* were farmers of revenue under the Maratha rule. Though their status was far inferior to that of Zamindars or Talukdars, they had acquired certain proprietary rights over the Villages whose revenues they collected. In the Malguzari Settlement (which is a species of Zamindari Settlement) the rights of the ryots or of the villages were ignored in the beginning. The State claimed half of the rental that the Malguzar got from his tenants. The State also undertook to *fix* this rent that the tenants had to pay to the Malguzar. The Settlement was to last for thirty years.

(22) SUMMARY AND CONCLUSION

We have thus passed under rapid review the principal land-settlements made during the regime of the East India Company—namely*, those in Bengal, Madras, Bombay, North-West Provinces, the Punjab and (partly) the Central Provinces. We shall give, in a subsequent chapter, the development of the Land-Revenue Policy under the Crown and the technical details of its administration. But the foregoing account shows that the main lineaments of that policy were fixed in the pre-Mutiny period. When the Charter was renewed in 1853 special attention was paid to this

question. The Directors were against the Permanent Settlement but they admitted that the Indian Land Revenue was a *tax* and not a *rent*. Thus in their famous Despatch of December 17, 1856 they said: "The right of the Government is not a *Rent* which consists of all the surplus produce after paying the cost of cultivation and the profits of agricultural stock, but a land-revenue only, which ought, if possible to be so lightly assessed as to leave a surplus or *Rent* to the occupier whether he, in fact, let the land to others, or retain it in his own hands."

The Half-Rental Rule and the 30 years Settlement were also accepted, though, in practice, there were wide and frequent departures from it, particularly in the sparsely peopled parts of India, e. g., the Punjab, the Central Provinces &c.

SECTION TWO

(23) FINANCE UNDER THE COMPANY

We have considered in the 3rd and 4th chapters the territorial expansion of the Company during this period. It would be interesting to examine the effect of this expansion upon the finances of the Company. What the Court of Proprietors in England cared for was a satisfactory dividend; this depended, in its turn, upon a surplus of revenue over expenditure in India. To 'maximise' the revenue, and 'minimise' the expenditure was the Alfa and Omega of the policy of the Directors. In the pursuit of this policy the Directors found themselves exposed to two conflicting temptations. On the one hand they kept on protesting against that expansive tendency of the policy of Wellesley, of Hastings, and of Dalhousie, which involved them in costly wars and thus balked them of their dividend; at the same time it made them reluctant to let go out of their grasp any of the newly acquired territories, as the employment of an increasing number of civil and military officers for their administration gave full play to their exercise of 'patronage'. The revenues of the Company were thus subjected to a double loss—that caused by wars, and that caused by an expensive system of administration, and the net financial result of the career of conquest and expansion which the Directors alternately openly disavowed and secretly desired, was an alarming addition to the debt of the Company. No efforts were spared *e.g.* exactions and tributes from Native Princes, Subsidiary Alliances, fines and forfeitures &c., for getting as large a revenue as possible. But the whole of it was

swallowed by the exigencies of administration, and more was constantly demanded. Kaye gives the following account of this increasing revenue: "Under the administration of Lord Cornwallis 1792-93, the Indian revenue amounted to 8 millions of English Money. Under Lord Wellesley's administration in 1804-05 it had risen to nearly 14 millions. At the close of Lord Minto's period of government in 1813-14 it was set down at 17 millions; under his successor, Lord Hastings in 1821-22 it exceeded 21 millions; in 1852, the gross revenue was estimated at 29 millions." *

But in spite of this continuous increase of revenue the position of the Company went from bad to worse. The Company, paradoxically enough, used to have a *surplus* when the revenue was smaller. But the expensive wars of Wellesley caused heavy deficits and therefore a large Public Debt. The Company had to approach Parliament for assistance, and at the time of the renewal of the Charter in 1813, an important change was made in the system of keeping the accounts of the Company. From 1765 to 1813 the East India Company did not distinguish between its territorial from its commercial expenditure. But the Act of 1813 required a separation of these accounts. Lord Hastings, after attending to the grave situation of the Company's finances, calculated that the acquisition of territory made by him would yield to the Company a net annual surplus of four millions of pounds. But in spite of the additions to territory, the period from 1813 to 1833 ended with an increase of 17 million pounds in the public debt. In that year the Company was deprived of its last traces of commercial monopoly and the Indian Exchequer was saddled with

the burden of paying more than £600,000 for dividends to proprietors of India Stock. The extension of territory in the period 1833-53 resulted in an enormous addition to the Public Debt which rose from 394 million pounds in 1829 to roughly 60 million pounds in 1850.

A natural result of recurring deficits and heavy additions to the debt was the increase and multiplication of taxation.

All the taxes and other sources of revenue produced about $24\frac{1}{2}$ crores of Rupees in 1851-52, out of which, land contributed as many as $14\frac{1}{2}$ crores. On the other hand the total expenditure in the same year was roughly $24\frac{1}{2}$ crores out of which 10 crores was for military purposes alone.

(24) PUBLIC WORKS

From the continued financial difficulties of the Company (as explained in the last section), one will not be wrong in inferring that no considerable outlays were made upon the construction of Public Works during this period. The average annual amount utilised for 'Public Works in India, comprising roads, bridges, embankments, canals, tanks and wells' was about 30 lacs of rupees. In 1837-38 it was 17 lacs; in 1851-52 it was 70 lacs. But in spite of this increase, one must admit "that the amount of money expended on such works is miserably small in comparison with the immense sums lavished on unproductive wars".* As the same authority continues: "that roads have not been made, canals have not been dug, bridges have not been built, in the number and to the extent to which the interest of the country demanded, and the

benevolence of its rulers desired, was so, solely because the money which was necessary to the construction of such works has been abstracted from the public treasury to meet the expenditure incurred by the ruinous wars in which we have been engaged."

What progress was made was due entirely to the public spirit of Governor-Generals like Hastings and Hardinge, to the lessons taught by the visitations of famine in North India which brought home to the authorities the necessity of constructing Irrigation works, and finally to the labours of Engineers like Colonel Bird Smith and Sir Arthur Cotton.

As soon as some tranquility was established after the wars of Hastings, the attention of that Governor-General was drawn to the extensive system of the Jumna and Ganges Canals constructed by the Mogul Emperors, which had fallen into ruins. The restoration, therefore, of the Western and Eastern Canals of the Jumna, was the first great achievement of the new administration. The name of Colonel Colvin is associated with these works.

The famine of 1838-39 pointed to the restoration of the Ganges Canal—which was sanctioned by Lord Auckland. Lord Ellenborough wished to have the canal mainly for the purposes of navigation, and under such conflicting views, no progress was made until the time of Lord Hardinge. The latter put his heart into the project and thus the great work was accomplished. The Ganges Canal has been described "as one of the most magnificent works in the world."*

In the newly acquired province of the Punjab, the

development of the country by irrigation was one of the leading ideas of Lawrence from the first. The proposals of Lawrence were cordially approved by Lord Dalhousie and materialized in the Baree Doab Canal.

Commenting upon the material and moral advantages of irrigation, Kaye rightly observes: "To fertilise the land is to civilize the people. It is impossible to conceive anything that will have a greater effect upon the civilization of the inhabitants of Upper India than the great remedial measures which guard them collectively against all the barbarising and demoralising effects of famine, and secure to every man individually his daily bread."*

The question of irrigation in South India—where the physical conditions are different from those of the North was tackled by Sir Arthur Cotton, and he projected and far advanced large schemes in the deltas of the three great rivers in Peninsular India—the Krishna, the Godavari, and the Kavery.

Equally important was the provision of the means of communication—the Trunk Road from Calcutta to Delhi (1423 miles), and Bombay Agra Road commenced in 1840 (740 miles) being the outstanding achievements in this direction.

In spite of these results, the general complaint against the Directors was that they did not apply sufficient funds for Public Works: nor did they allow such works to be undertaken by private agency.

(25) EDUCATION

Under the stress of wars and of territorial aggrandizement no attention had hitherto been paid

* Kaye : 304.

to the condition of the people. The economic drain which increased in volume and ramifications with every increase in the territories of the Company was, if possible, the least evil of the Rule of the Company. Greater harm was done by the complete exclusion of Indians from every post of honour and emolument in the public service of the land. This exclusion was all the more galling when contrasted with the memory of the highest positions—in Civil and Military Departments which they held—and often with distinction—in those Native States which were but recently subverted. Above all nothing had as yet been done to introduce the people of India to that Western Civilization whose superiority in the science of government, in the method of war, in administration, in patriotism, in organization, in discipline, in culture, in education, in science, in art—in every thing, in fact, which makes for success in the great struggle for existence which is going on around us as much among individuals as among nations—whose superiority—I say—was being demonstrated to them with a rapidity and thoroughness that staggered them.

Little attention was paid to the subject of Education before the days of Lord William Bentinck. It is true that the Charter Act of 1813 had allowed the ingress, under restrictions, into India of Missionaries that the latter may introduce useful knowledge and Christianity among the native population; the Act further required one lac of rupees to be set aside every year 'for the revival and improvement of literature and the encouragement of learned natives of India, and for the introduction and promotion of a knowledge of the Sciences among them.'

But in spite of this Parliamentary enactment and

of what had been done by Warren Hastings for Oriental learning many years before that enactment, little progress was made till 1833. In that year 'a Committee of Public Instruction' was formed to utilise the Fund for the promotion of Education. But this Committee did little more than print Classical books and give stipends to scholars in the Oriental Colleges at Benares and Calcutta. In fact about this time a great controversy was going as to what system of education should be encouraged by Government—the Western or the Oriental. At last the cause of Western Education triumphed, thanks to the labours of the Missionaries, the efforts made by Reformers like Ram Mohan Roy, and to the famous Minute of Lord Macaulay. When he came out to India as the First Law Member under the Act of 1833 he was appointed President of the Committee of Public Instruction. The Members of this Committee were divided on the question of Western *versus* Oriental Education. Macaulay's Minute which made a deep impression upon Lord William Bentinck decided this controversy.

It should be noted, however, that Macaulay's attack was directed against Classical (Sanskrit and Persian) learning. He was entirely for improving the Vernaculars; but as they, in their backward state, could not be a fit medium for conveying Western knowledge, the English language was to be used for that purpose. A number of causes conspired to make the spread of Western learning very rapid. (1) Increased activity of the Missionaries, who established schools and colleges as much for the spread of knowledge as for proselytism. (2) Bentinck displaced the Persian language from the Law Courts and

English was substituted. (3) Freedom of Press was established in 1835. (4) Lord Hardinge made the attainment of Western Education a qualification for entrance into Government Service.

While the Governor-General in Council was labouring to spread Western Education, administrators like Elphinstone, Munro, and Thomason were trying to encourage the spread of knowledge through the vernaculars. Elphinstone found the newly acquired Province of Bombay very backward in education and, therefore, formed "A Society for the Promotion of the Education of the Poor" in 1820 and for 12 years this Society printed books in the vernacular and established schools for the spread of Primary Education. His project to found a College for the spread of higher education was opposed in his Council and did not receive the sanction of the Court of Directors. But though no English School was started in Bombay during Elphinstone's time, one was opened in 1828—the year after his departure, and the great Elphinstone Institution (now the College) was opened in 1842.

Munro derived the inspiration to spread knowledge from Elphinstone. His plan was to establish normal schools for the preparation of teachers who were later on to be placed in the districts for the diffusion of knowledge through books specially designed for the purpose.

What was done for Bombay by Elphinstone, and for Madras by Munro was done for the Agra Province by Thomason. He came to the conclusion that "to produce any perceptible impression on the public mind in the new province, it must be through the medium of the vernacular languages" The labours

of Thomason in the pursuit of this policy were thus eulogised by Dalhousie in 1853: "I desire at the same time to add the expression of my feeling, that even though Mr. Thomason had left no other memorial of his public life behind him, the system of general vernacular education, which is all his own, would have suffered to build up for him a noble and abiding monument to his earthly career."*

Bentinck deputed Mr. William Adam an American Missionary—to enquire into the state of education in Bengal and his report is extremely valuable as throwing light upon the methods and extent of indigenous system of Education as it prevailed there for centuries. He was in favour of extending the vernacular institutions on the lines of Elphinstone and Munro but his proposals were not accepted, and emphasis was laid upon the imparting of higher education through English.

It will thus be seen that though a powerful impetus had been given to the spread of English Education, the Vernaculars were neglected, the network of indigenous schools fell to pieces, and as the funds made available for the promotion of knowledge were, in any case, almost meagre, the progress was imperceptible.

The first step of permanent interest was taken by the Education Despatch of 1854—of Sir Charles Wood, the President of the Board of Control; but the serious execution of the policy adumbrated by that Despatch properly belongs of the next period.

(26) INDIANS AND THE PUBLIC SERVICES

A perpetual problem of Indian Administration has been the extent to which Indians should be employed in the administration of the country. In the beginning they were employed in the Civil Departments as well as in the Army. Indeed it was through them that the duties of Diwani—*i. e.* Revenue Collection and Administration of Justice were discharged. Their exclusion from office begins from the year 1772 when the Court of Directors resolved to 'stand forth' as the Diwan. At that time servants of the Company—Indian as well as European—were tainted with corruption. Cornwallis tried to remove this evil by increasing the salaries of the European servants of the Company and thus putting them above the temptation of receiving bribes. But, as already noted, the weakest point in the reforms of Cornwallis lay in his having systematically ignored the claims of the Indians. Every extension of territory meant employment of more Europeans and an enormous addition to the 'patronage' of the Court of Directors. The way in which they distributed this patronage among themselves has been referred to already. That the general tone of the inferior servants of the Company—and particularly in the interior of the country—was low is now admitted, though there were many honourable exceptions. How jealous the Directors were of their patronage is well brought out by the fate of the Fort William College which Marquis of Wellesley established at Calcutta. The object of the College was to give to the young factors and writers of the Company a knowledge of the Vernaculars and of the history customs and institutions of the Indians

But the Directors ordered the immediate closing of the College. The servants instead got a rudimentary knowledge in the Institution at Hailebury in England prior to their going out to India. The evil effects of the ignorance and inexperience of the English servants and of the exclusion of Natives were well pointed out by Sir Thomas Munro and by Elphinstone; but it was reserved for Lord William Bentinck to be the first to throw open the judicial administration to the sons of the land. This new principle was laid down in the Act of 1833. "No Native of the said territories, nor any natural-born subject of His Majesty resident therein, shall, by reason only of his religion, place of birth, descent, colour, or any of them, be disabled from holding any place, office, or employment under the said Company." In explaining this clause the Despatch which accompanied the Act (and which has been attributed to James Mill) said "The meaning of the Enactment we take to be that there shall be no governing caste in British India; that whatever other tests of qualification may be adopted, distinctions of race or religion shall not be one of them," and it proceeded to make the extended employment of Indians an argument for "the promotion of every design of education, and the diffusion among them of the treasures of science, knowledge and moral culture." It was Lord Macaulay who ran into raptures at having been one of those who assisted in framing the Act of 1833 which contained that clause—"that wise, benevolent, that noble clause" as he said.

In practice, however, the policy of the Company was one of exclusion. The distinction between Covenanted and uncovenanted service was put forward as an excuse for this exclusion. The Act of 1793

reserved all principal offices in India to the 'Covenanted' servants (*i.e.* those who had entered into a Covenant or agreement that they would not trade or accept presents etc.) of the Company. But the covenant became meaningless when the Company ceased to be a commercial body in 1833. Yet the distinction was maintained and the exclusion of Indians continued.

In 1853 the Directors were deprived of their patronage and the Civil Service of India was thrown open to competition to all natural born subjects of Her Majesty. But as the competitive examination was held in London, it meant the exclusion of most of the Indian candidates. The assurances contained in the Queen's Proclamation did not materially improve matters. The subsequent history of this question will be taken up in a later Chapter.

CHAPTER VI

SOME GREAT ADMINISTRATORS UNDER THE COMPANY

(27) JUDICIAL REFORMS OF CORNWALLIS

We considered in the first Chapter how, thanks mainly to the resourcefulness and energy of Clive, British power was firmly established in Madras as against the French, and in Bengal as against the Nawab of that Province. The misrule that ensued in Bengal attracted the attention of Parliament which by the two Acts described in the second Chapter, established control over the affairs of the Company. The first Parliamentary Governor-General to be sent to India was Lord Cornwallis—a nobleman, statesman, and soldier and, therefore, peculiarly qualified to deal with the very pressing questions of revenue settlement and judicial administration in Bengal. Some account has already been given of his Permanent Revenue Settlement. In the administration of justice he followed the lines laid down by Warren Hastings. It should be remembered in the first place that the 'District' had been made a unit of administration under the 'Collector' in 1781. But the revenue and judicial work had been combined in the hands of the Collector. The first reform of Cornwallis consisted in separating these two functions, all revenue matters being placed in the hands of the Collector, and all judicial (so far as they were civil) matters being placed in the hands of 'District Judges' who were now appointed in each District. There were also

established in large towns "*Munsif's Courts*" and "*Ameen's Courts*" (to try cases of the value of Rs. 50 and under) and "*Registrar's Courts*" (for cases not exceeding Rs. 200 in value). Appeals against the Munsif's and Registrar's Courts lay to the District Court mentioned above. The District Court consisted of the Judge, a *Kazi* and a *Pandit*. Appeals from the District Judge lay to the *Provincial Courts* of which four were established at Calcutta, Patna, Moorshidabad, and Dacca respectively. In each there were three European Judges, a Registrar, a *Kazi* and a *Pandit*. In all cases of less than Rs. 1000, their decisions were final. In more valuable cases an appeal lay to the 'Sudder Diwani Adalat' at Calcutta presided over by the Governor-General in Council.

Criminal Courts.—The lowest Criminal Courts were those of the Magistrates' Courts held by the various Justices of the Peace in the District (the District Judges, and Registrars, and *Ameens* being all Justices of the Peace). These Courts could award sentences up to 15 days imprisonment or fine up to Rs. 200. Above these Courts were the Courts of Circuit, presided over by the Judges of the Provincial Courts (mentioned above). They were four in number and went from District to District. Their Jurisdiction was original in all cases sent up to them by the Magistrates' Courts and appellate in decisions of the same Courts. Above the Courts of Circuit was the Sudder Nizamat Adalat presided over by the Governor-General in Council.

Police.—The police arrangements were altered at the same time. The private establishments of the Zamindars were abolished and a connected Police

service was established, having a *Daroga* in charge of each District.

Thus the salient features of the reforms of Cornwallis were (a) a complete separation of revenue from judicial administration; and (b) the provision of a regular system of appeals from lower to higher Courts. Cornwallis, however, was not satisfied with a mere reform in the machinery of administration. He had seen how entirely the Native inhabitants were exposed to the unchecked jurisdiction of the officers of the Company. He was eager to give to the helpless inhabitants some means of redress against the officers. He made all the officers amenable for the Courts of Law. "We have resolved, likewise, that the Collectors of revenue and their officers, and indeed all the officers of the Government, shall be amenable to the Courts for acts done in their official capacities, and that Government itself, in cases in which it may be a party with its subjects in matters of property, shall submit its rights to be tried in the Courts under existing laws and Regulations."

Cornwallis also turned his attention to systematic codification of the Regulations. As has been already explained the power of passing such Regulations was conferred on the Governor-General in Council by the Regulating Act. But they had not been systematically collected or arranged: some were not even printed. Cornwallis ordered that all such Regulations should be numbered, arranged, printed, and circulated for the guidance of all concerned.

The chief defect in this work of Cornwallis was the entire exclusion of Indians from a share in the administration of their own country. The lamentable

(28) REFORMS OF LORD WILLIAM BENTINCK 117

results of this policy balked his reforms of the success to which they were otherwise fully entitled.

Half a century of territorial expansion had to intervene before the work of Cornwallis was resumed by Lord William Bentinck.

(28) REFORMS OF LORD WILLIAM BENTINCK

Judicial Reforms.—"Of all the Governors who succeeded Cornwallis Lord William Bentinck most resembled that benevolent and upright statesman. As Cornwallis was a reformer, so was he. He had abundant time to devote himself to measures of domestic improvement, for no miserable war was sitting like a curse upon his arm and paralysing his administrative energies.*

Cornwallis had made justice cheap and accessible; he had also provided wide powers of appeal. But this only increased litigation. Also the English Judges, in their eagerness to adhere to the letter of the Regulations, were very slow in deciding cases and, as a result, there was frightful accumulation of work.

The first reform of Bentinck was the abolition of the Provincial Courts which were also Courts of Circuit. They had become "the resting places for those members of the service who were deemed unfit for higher responsibilities." The dilatoriness of these courts as courts of justice was particularly notorious and inflicted great hardships upon the accused and the witnesses. Some relief was given by the establishment at Allahabad of a separate Court of Appeal for the newly created North-West Province. The same result was produced by the employment of

Indians in the more important posts in the Judicial administration. This was one of the greatest reforms of Bentinck. Hitherto the Judges were Europeans and those who were too old or unfit for revenue work were made Judges. They were ignorant of the language of the people and of their legal and social Institutions. They were also too much given to 'artificial technicalities of law.' On account of these causes judicial administration was fast falling into a chaos and the desirability of entrusting a substantial part of it to Indian agency to clear off the heavy arrears, if for no other reason, had been repeatedly admitted by the Court of Directors. But no step had been taken in that direction. The powers of the Sadar Ameens and the Munsifs which were the only two classes of service open to Indians—were very limited. Bentinck established in 1831 a higher grade of Judicial Offices known as "Principal Sadar Ameens" who were authorised to try cases involving property of any amount. An appeal lay from them to the European Judges.

The reform of the Criminal Branch of Judicial administration was not so easy. Here Bentinck took a retrograde step. He transferred the duties of the Provincial Courts (abolished by him) *i.e.* of holding Sessions for criminal trials to the District Judges. The Magisterial powers of the Judges were taken away from them and retransferred to the Collectors. The Collectors thus became at once Collectors and Magistrates. This combination of functions proved unsatisfactory. His other measures were (1) the appointment of uncovenanted servants as Deputy Magistrates (in 1843) in any district, at the discretion of the Bengal and Agra Governments and armed with

full Magisterial powers; and (2) improvement in the pay and status of the 'Daroga' to enable this officer to discharge his Police functions properly.

Other Reforms.—The labours of Bentinck were not confined to judicial administration alone. He was thoroughly imbued with the Liberal spirit that swept over England and the Continent about this time. "He was nearer to the *beau ideal* of what a Governor-General ought to be than any man that held that office. There have been several good men and several great men in the same position, but there has been none like him. A paramount sense of duty to the inhabitants of India and a desire to do them good inspired all his words and actions."*

He had received definite instructions from the home authorities to effect retrenchment in expenditure which had grown enormously on account of the wars of Lord Hastings—and with the help of two specially appointed Committees he made large economies in Civil and Military Departments. He reformed the currency, and rupees with the head of the British Sovereign were struck and made equivalent to a tenth part of the pound. He also overhauled the Opium Department.

In administration he was the first to grasp the necessity of employing Indians in the higher posts of the Public Service. "He clearly saw in this far-sighted view of Policy that through the path of gradual enlistment of the intellectual ability and ambition of the Natives in the permanent service of their own land, lay our only reasonable or definite prospect of retaining an ascendancy therein."†

* Torrens: 303.

† Torrens: 303.

His Social Reforms consisted in the abolition of *Sati* and the suppression of *Thaggi*. He was dissuaded from interfering with the customs of the people by Oriental scholars like H. H. Wilson. But he persevered and abolished the evils.

We have already considered in Chapter five his Land Revenue Policy and his Educational Policy.

On the whole we may concur with the tribute paid to him by his colleague in the Council, Sir Charles Trevelyan: "To Lord William Bentinck belongs the great praise of having placed our dominion in India on its proper foundation in the recognition of the great principle that India is to be governed for the benefit of the Indians, and that the advantages which we derive from it should only be such as are incidental to and inferential from that course of proceeding."

(29) MUNRO AND ELPHINSTONE

The Reforming Movement.—As Prof. Ramsay Muir points out^{*} the Reforming movement in India associated with the name of Lord William Bentinck was in part stimulated by the Liberal movement that set in Europe after the overthrow of Napoleon. This new spirit showed itself in two ways. On the one hand there was a far more respectful study and appreciation of Indian law and custom than had been shown since the days of Warren Hastings. Metcalfe, Elphinstone, Munro and Malcolm—each one of this great quadrilateral of administrators—was an admirer of the village communities of India. The primary aim of these great men was to maintain and strengthen whatever was good in the self-governing institutions

* Ramsay Muir : 282—283.

of the people. Along with this eagerness to understand and preserve what was old, there was an equally strong anxiety to introduce the civilization of the West into India. Dalhousie represents this type.

Their attitude towards the Village Communities.—As examples of the first tendency a few extracts from different authorities describing the village communities may be given here.

Elphinstone in his report had drawn attention to these village communities. "In whatever point of view we examine the Native Government in the Deccan, the first or most important feature is the division into villages or townships. These communities contain in miniature all the materials of a State within themselves, and are almost sufficient to protect their members, if all other Governments are withdrawn. Though probably not compatible with a very good form of Government, they are an excellent remedy for the imperfections of a bad one; they prevent the bad effects of its negligence and weakness, and even present some barrier against its tyranny and rapacity.

"Each village has a portion of ground attached to it which is committed to the management of its inhabitants. The boundaries are carefully marked and jealously guarded. They are divided into fields, the limits of which are exactly known; each field has a name and is kept distinct, even when the cultivation of it is long abandoned. The villagers are entirely cultivators of the ground with the addition of the few traders and artisans that are required to supply their wants. The head of each village is the Patil who has under him an assistant called the Chaugula and a clerk called Kulkarni. There are besides 12 Village officers, well-known by the name of Bara Baloti.....the

Patil is head of the Police and of the Administration of Justice in his village, but he need only be mentioned here as an officer of revenue. In that capacity he performs on a small scale what a Mamlatdar or Collector does on a large; he allots the land to such cultivators as have no landed property of their own and fixes the rent which each has to pay; he collects the revenue for Government from all the ryots; conducts all its arrangements with them, and exerts himself to promote the cultivation and the prosperity of the village. Though originally the agent of the Government, he is now regarded as equally the representative of the Ryot and is not less useful in executing the orders of the Government than in asserting the rights or at least in making known the wrongs of the people."

Sir Charles Metcalfe.—In his famous Minute of 1830 also wrote:—The village communities are little Republics, having nearly everything that they want within themselves and almost independent of any foreign relations...The union of the village communities—each one forming a separate little state by itself,—has, I conceive, contributed more than any other cause to the preservation of the people of India through all revolutions and changes which they have suffered and it is in a high degree conducive to their happiness and to the enjoyment of a great portion of freedom and independence. I wish, therefore, that the village constitutions may never be disturbed and I dread everything that has a tendency to break them up. I am fearful that a revenue-settlement with each individual ryot, instead of one with the village community through their representatives, the head men might have such a tendency For this reason

and for this only, I do not desire to see the Rayatwari Settlement generally introduced into the Western Provinces."

Views of Sir Thomas Munro.—Munro's Views on Indian Administration are contained in his well-known Minute of 31st December 1824 which Mr. R. C. Dutt described as "perhaps the most thoughtful and statesmanlike Minute ever recorded in India since the time of Cornwallis".* Some of those views may be summarised here.

(1) *On the employment of Indians in Administration.*—Munro deplored that no confidence was placed in the Natives and that they were excluded from all offices; he was convinced that mere spread of education would not raise the people; "our books alone will do little or nothing; dry, simple literature will never improve the character of a nation. To produce this effect, it must open the road to wealth, honour, and public employment. Without the prospect of such a reward, no attainments in science will ever raise the character of the people." Munro also held that the employment of Indians was also desirable on the ground of getting accurate information from them regarding their laws and customs and for the making of new laws for them.

(2) *On the Advantages and Disadvantages of British Rule.*—Though British Rule has secured India from the calamities of foreign war and internal commotion it has also brought about the exclusion of the people from any share in legislation or administration; this necessarily leads to a lowering of the character of the people.

* Dutt · Early British Rule page. 160.

"One of the greatest disadvantages of our Government in India is its tendency to lower or destroy the higher ranks of society, to bring them all too much to one level and by depriving them of their former weight and influence to render them less useful instruments in the internal administration of the country."

(3) *On the Future of India.*—"There is one great question to which we should look in all our arrangements; what is to be their final result on the character of the people? Is it to be raised or is it to be lowered? Are we to be satisfied with merely securing our power and protecting the inhabitants, leaving them to sink gradually in character lower than at present or are we to endeavour to raise their character and render them worthy of filling higher situations in the management of their country and devising plans for its improvement? It ought undoubtedly to be our aim to raise the minds of the Natives and to take care whenever our connection with India might cease, it did not appear that the only fruit of our dominion there had been to leave the people more abject and less able to govern themselves than when we found them... Various measures might be suggested which might all probably be more or less useful (in improving their character): but no one appears to me so well calculated to ensure success, as that of endeavouring to give them higher opinion of themselves by placing more confidence in them, by placing them in important situations, and perhaps by rendering them eligible to almost every office under the Government..... When we reflect how much character of Nations has always been improved by that of Governments and that some once the most

cultivated have sunk into barbarism, while others, formerly the rudest have attained the highest point of civilization, we shall see no reason to doubt that, if we pursue steadily the proper measures, we shall in time so far improve the character of our Indian subjects as to enable them to govern and to protect themselves."

N. B. :—For his Views on Education and his Land Revenue Administration see Chapter Five.

Elphinstone as an Administrator.—Elphinstone came to India as a young lad of 17 in 1796 and served in the capacity of a Private Secretary under Arthur Wellesley—the future Duke of Wellington. He was Resident at Nagpur from 1804 to 1808 and there he obtained intimate knowledge of Maratha affairs. A Mission to Kabul enabled him to write a history of Afghanistan and on his return in 1811 he was appointed Resident at Poona and was witness of the last stages of the Peshwa's rule. After the over-throw of that rule he was appointed Commissioner of the Deccan in January 1818 and Governor of Bombay in 1819.

His fame as a liberal Administrator rests mainly on his work in three directions.* His first endeavour was to codify the Law. He framed the Bombay Code consisting of 27 Regulations and he also had the idea of preparing an exhaustive digest of laws and customs of the different castes of the Hindus. His second object was to confer on the people of India as large a share in the work of administration as possible. In this respect the maxim of Elphinstone was this: "our object ought to be to place ourselves in the same relation to the Natives as the Tartars are to the

* Dutt India under Early British Rule

Chinese: retaining the Government and military power, but gradually relinquishing all share in civil administration, except that degree of control which is necessary to give the whole an impulse and direction." His third and last purpose was to spread a sound system of education, about which something has been said in the preceding chapter.

Conclusion.—It is impossible to mention here all the great names of this period or to specify their work, but the student of this period of Indian administration is easily convinced that at no time—either before or after this period—were there so many able servants of the Company labouring for the good of the people. Sir John Shore, John Sullivan, Sir John Malcolm, Thomason, R. M. Bird, Colvin, Cotton, Briggs, Todd, Grant Duff are famous names. As R. C. Dutt observes,* "Never did Englishmen of any generation show higher literary culture and talent in India, never did they show a truer sympathy with the people."

(30) LORD DALHOUSIE AS AN ADMINISTRATOR

Passing over a period of twenty years from Lord William Bentinck we come to Lord Dalhousie. He is the consummation of the work of the East India Company. His thirst for territorial expansion and his anxiety to introduce material and moral elements of Western civilization into India, illustrate the weakness and strength respectively of the Rulers of India of the first half of the Nineteenth Century. Not only, however, does he sum up in himself the characteristics of the preceding era, he foreshadows the development of the succeeding period. He is thus

* Dutt : India under Early British Rule p. 428.

0) LORD DALHOUSIE AS ADMINISTRATOR 127

sitional figure, His views have been set out clearly in his well known Minute of 28th February in which he took a review of his long administration.

Each item mentions what he achieved or proposed to achieve regarding the various problems of administration.

Securing the peace of the Frontier by friendly treaties with Kashmir, Kelat, and Kabul.

Conquest of the Punjab and Burma.

Annexations of the kingdoms of Nagpur and Oudh, the principality of Satara, the Chiefship of Jhansi, and the acquisition of Berar.

Increase in the revenue from 26 million pounds in 1847-48 to 30 million pounds in 1855.

Setting up of strong Civil Governments in the provinces newly acquired, particularly in the 4 kingdoms of Punjab, Burma, Oudh and Nagpur.

Separation of Bengal, and its administration by Lieut-Governor as required by the Act of 1853.

The establishment of the Legislature of India as distinct from the Executive Council of the Governor-General. Its procedure was fixed; its debates were printed and published.

Reorganization of the civil service after it had been thrown open to competition, by setting up Departmental examinations as tests of efficiency and promotion.

Appointments of Inspectors of Prisons in the N.-W. Provinces and Bengal, and in Madras and Bombay for establishing prison discipline

10. Extension of the system of primary education as it was established by Mr. Thomason in the N.-W. Provinces and the establishment of the Presidency College of Calcutta.

Giving effect to the orders contained in the famous Education Despatch of 1854.

A Department of Public Instruction under a Director was established; provisional rules for grants-in-aid were drawn up; and a Committee appointed to frame a scheme for the proposed Universities. Also special attention was paid to Female Education.

11. The first introduction into the Indian Empire of three great engines of social improvement which the sagacity and science of Western times had previously given to the Western Nations namely Railways, uniform Postage, and the Electric Telegraph.

airways—A system of trunk lines connecting the interior of each Presidency with its principal port and connecting the several presidencies with each other, projected and begun.

post.—A special Commission laid down the following principal rules underlying the postal system (1) the institution of the post office throughout India as a distinct department, superintended by the Director-General, under the immediate control of the Government of India. (2) A uniform rate irrespective of distance, throughout India. (3) The substitution of postage stamps for cash payments. (4) The restriction of the privilege of official franking to as few officers as possible.

telegraph.—About 400 miles of Electric Telegraph were brought into operation.

12. (a) The successful execution and completion of the Ganges Canal.
(b) The Bari-Doab canal in the Punjab.
13. Works for improving the general communications of the Country.
(a) Internal navigation by steam-ship flotillas in the Ganges, the Indus, and the Irrawady.
(b) Improvements in the ports of Calcutta, Bombay, Karachi, Rangoon and the new port of Dalhousie on the Bassein River.
(c) Construction of roads—particularly the Grand Trunk Roads, and bridges &c.
14. Finally the practice of requiring the Provincial Governments to submit annual Reports of important occurrences in their Provinces was begun by Dalhousie.

Retrospect.—With this chapter the administration of India by the East India Company comes to a close. It appeared as though the possessions of the East India Company in India were never left in a stronger or more enduring state than when Lord Dalhousie left the country. But Dalhousie built upon treacherous foundations. His work—and along with it the work of his predecessors—received a rude shock when the great Mutiny broke out. There was something fundamentally wrong with the System of Double Government introduced by Pitt's Act of 1784. We shall conclude this Part by examining the working of this faulty arrangement in the next chapter.

CHAPTER VII

HOME ADMINISTRATION (1784-1858)

(31) PARLIAMENTARY LEGISLATION DURING THE PERIOD

The periodic renewal of the Charter of the Company afforded to Parliament excellent opportunities to hold inquests into the affairs of the Company and to modify or restrict or altogether abrogate its privileges. It is proposed to review here the legislation thus occasioned. An *Act of 1786*, chiefly at the instance of Lord Cornwallis who was appointed to succeed Warren Hastings, empowered the Governor General to override the majority of his Council and act on his own responsibility. The *Charter Act of 1793*, which was passed when Pitt was at the height of power and his friend Dundas was the President of the Board of Control, made no important change. It provided for the payment of the members and staff of the Board of Control out of Indian revenues. It continued for a further period of twenty years the territorial possessions and exclusive privileges of trade enjoyed by the Company. Passing over a number of minor enactments during the interval 1793-1813 we come to the *Charter Act of 1813*. It was preceded by a searching enquiry by a Committee of the House of Commons into the financial affairs of the Company and its labours are embodied in the famous Fifth Report which Ilbert describes as "a standard authority on Indian land tenures and the

best authority on the judicial and police arrangements of the time".* Fierce controversy raged about the continuance of the trade monopoly of the Company and the ingress into India of British subjects for purposes of trade and religious propaganda. The proposals of Government were embodied in thirteen Resolutions which were accepted by Parliament and formed the basis of the Act of 1813. Though the Charter was renewed for a period of twenty years, the import and export trade with India was thrown open to all British subjects, the Company retaining only the monopoly of trade in tea with India and of trade with China. Hitherto the Company had not kept its accounts in such a way as to show its political and territorial expenditure distinct from its commercial expenditure. This led to confusion. The new Act required the Company to show the accounts separately. It confirmed the patronage of the Court of Directors subject to the approval of the Crown in the case of higher appointments and of the Board of Control in the case of certain others. It also limited the number of King's troops the Company was required to maintain in India at its own expense. Finally it allowed British subjects to go out to India as traders or missionaries and to settle there under a system of license. The Act also marks the beginning of the ecclesiastical establishment in India and provided for a lac of rupees being set apart every year for "the revival and improvement of literature and the encouragement of the learned native of India, and for the introduction and promotion of a knowledge of the sciences among the inhabitants of the British territories in India".

* Ilbert Historical Introduction p 73

Charter Act of 1833.—Passing over once again minor enactments during the twenty years following 1813 we come to the Charter Act of 1833. This Act was passed by the Reformed House of Commons. Macaulay who was then in Parliament was Secretary to the Board of Control and James Mill was Examiner of India Correspondence at the India House. To James Mill is attributed the famous Despatch of 1834 which is an illuminating Commentary upon the Act of 1833.

Lord Morley characterised this Act as “certainly the most extensive measure of Indian Government between Mr. Pitt’s famous Act of 1784 and Queen Victoria’s assumption of the Government of India”*. To appreciate this high praise we must recall the changed circumstances—both in India and in England—under which that measure was enacted. The wars of Wellesley and Hastings had added enormously to the territories under British Rule, and to the difficulties of administration in India. In England, on account of reform of Parliament, liberal principles were in the ascendant; (1) there was a clamour for freedom of trade with India; (2) for the unrestricted immigration of Europeans into India; (3) for a reform of the laws of India; (4) and for an improvement in the state of Education prevailing in India.

In response to the first demand the last traces of the commercial monopoly of the East India Company were abolished, and the Company thenceforward became a purely political body.

To satisfy the second demand all restrictions upon the immigration of Europeans into India were removed; they could now settle in any part of India

* Speech (Keith Volume II 95)

that was in British possession, without the requirement of a license.

The unrestricted ingress into India of Englishmen rendered the reform of the Indian Law almost imperative. Macaulay well pointed out the danger of exposing the Indian population to the tyranny and insolence of the conquering race. As he put it "India has suffered enough already from the distinctions of castes and from the deeply-rooted prejudices which those distinctions have engendered. God forbid that we should inflict on her the curse of a new caste, that we should send her a new breed of Brahmins, authorized to treat all the native population as Pariahs."*

The dangers of the situation were increased by the very insufficient power of law-making that was enjoyed by the Governor-General in Council. Hitherto his Regulations had been made with special reference to the Indian population and to the servants of the Company. Nor could the Regulations have any jurisdiction over the Supreme Court which owed its origin to a Royal Charter. The first thing to do, therefore, was to increase and extend the legislative power of the Governor-General in Council so as to reach European settlers. He was, accordingly, empowered "to make laws and regulations for all persons (British, Foreigners, or Natives), and for all Courts (*i.e.*, the Courts of the Company and the Supreme Court)." Such laws were not required to be registered in the Supreme Court and forthwith became Acts of the Governor-General in Council.

A reform of the machinery for the making of laws was required on another ground also—namely the chaotic state into which laws and Regulations had

* Speech July 1833 (Keith)

fallen about 1833. At the time of considering the judicial reforms of Warren Hastings reference was made to the triumph of Hastings in his struggle against the Supreme Court as to the laws that were to be applied to the Indian subjects of the East India Company. The Act of 1781 laid down that in suits between Natives within the jurisdiction of the Supreme Court regard should be paid to the personal law of the parties and it likewise prescribed that no act committed in consequence of a rule or law of caste in Native families should be held to be a crime, although it might not be justifiable under the laws of England.

But though it now became possible for the personal law of the Hindus and Mahomedans to be developed, the principle was neither universal nor satisfactory; (a) thus, there were many communities, numerically small but socially and politically of increasing importance, *e.g.*, the Parsees, the Jains, the Portuguese, the Armenians etc., which were outside the pale of Hindu or Mahomedan Law: (b) again there were large areas of modern life for which neither the Hindu nor the Mahomedan law could have made any provision; (c) further, as the Mahomedan Law was applied in criminal trials, it inflicted great hardships upon the non-Mahomedans; (d) nor were some of the punishments prescribed by the Native Law *e.g.* mutilation, in consonance with modern views.

A practical difficulty in the application of the personal law arose from two further causes; (1) the Mahomedan Law was contained in the Koran and other texts; the Hindu Law in the Shastras and Commentaries thereon. It was not easy to interpret the texts or reconcile conflicting authorities. (2) In actual

practice, the laws—as contained in the texts—were modified by custom.

The arduous task of adapting the laws and customs of the population to changed circumstances was sought to be accomplished by the decisions of the judicial tribunals. But there were different tribunals, independent of each other, which administered the law. There were Courts established by Acts of Parliament (*e. g.* the Mayor's Courts), by Royal Charters (the Supreme Court,) and Courts of the Company (the Sadar Courts). Each put its own interpretation and even the Judges of the same Court did not always agree.

The power of making Regulations was given to the Governor-General in Council of Bengal, and to the Provincial Governors in Council by the Acts of 1773 and 1781. But the Regulations were of the nature of official instructions and explanations rather than of legislative enactments. Thus they embodied the Land Revenue Settlements and the judicial administration. Lord Cornwallis took great pains to systematize the Regulations. "He gave them permanent expression and substantial shape, for the guidance alike of those who were to administer and those who were to appeal to them. The Regulations were to be numbered, arranged, printed and circulated. They were to have a home in every Government Office and to be transmitted to the Authorities in England".* Lord Cornwallis arranged these Regulations in 1793 in the Bengal Code; similar collections of the revised Regulations were made for Bombay by Elphinstone, and for Madras by Sir Thomas Munro.

But these Regulations had defects of their own:

they were the work of practical administrators and not of skilled draftsmen, they were voluminous, and obscure, and contained a great deal of matter that was obsolete or repealed; above all, as they emanated from different sources, they often contained conflicting instructions.

On the top of the Regulations stood the Acts of Parliament that were made applicable to India. (a) Thus the Charter of 1726 given by George I introduced into India the English Statue Law as it stood in that year. (b) English Statue Law passed after 1726 was applicable in India if it was expressly extended to any part thereof.

It would be clear from this brief survey of the state of laws and judicial tribunals in British India, that the time had come for great reform. Macaulay suggested 'codification of the laws' as the only remedy to remove uncertainty, and recommended the appointment of a Law Commission for that purpose. "The work of digesting a vast and artificial system of unwritten jurisprudence is far more easily performed and far better performed by few minds than by many, by Government like that of Prussia or Denmark, than by a Government like that of England. A quiet knot of two or three veteran jurists is an infinitely better machinery for such a purpose than a large popular assembly divided, as such assemblies almost always are, into adverse factions. This seems to be, therefore, precisely that point of time at which the advantage of a complete written Code of laws may most easily be conferred on India. It is a work which cannot well be performed in an age of barbarism, which cannot without great difficulty be performed in an age of freedom. It is a work which especially belongs to a

Government like that of India—to an enlightened and paternal despotism.” The great principles of codification were three, as put forward by Macaulay: *uniformity* where you can have it, *diversity* where you must have it, but in all cases *certainly*.

The provisions of the Charter Act of 1833 so far as they bore upon the machinery for the making of Laws for India were three: The Act deprived the Governors in Council of Bombay and Madras of their independent powers of law-making: it vested this power in the Governor-General in Council of India; and it added to the Council, for the satisfactory work of legislation, a fourth member (called the Law Member) who was to be an English Barrister.

The Charter Act also provided for the appointment of a Law Commission for codification, and Macaulay, the first Law Member under the new Act, was appointed the President of this Commission.

So far, however, as actual results were concerned, the Law Commission was a failure. Its activity languished after the departure of Macaulay. The draft of the Indian Penal Code made by Macaulay was no doubt a solid achievement: but though begun in 1835 it did not become an Act for nearly 20 years. The Commission, no doubt, collected a vast amount of information, but did not proceed beyond that; and it cost India about 17 lacs of rupees.

The provisions of the Act of 1833 with respect to Education and the employment of Indians in the Public Services have been referred to in Chapter five.

The Despatch of 1834 offered important advice as to the relations of Central Government with the Provincial Governments and the Act provided for the creation of a new Presidency of Agra. The

significance of the Act as marking the growth of centralization will be referred to in the next Chapter.

Charter Act of 1853.—Parliamentary legislation during 1833-53 was of a minor character. But when in 1853 the Charter was renewed it simply provided that the Indian territories should remain under the Government of the Company, "in trust for the Crown, until Parliament should otherwise direct." The Act reduced the number of Directors of the Company from twenty-four to eighteen and provided that six of them should be appointed by the Crown. It authorized the Court of Directors and the Board of Control to appoint a Lieutenant-Governor of Bengal. Its provision regarding the enlargement of the Executive Council of the Governor-General for legislative purposes will be referred to in another connection. It took away the patronage from the Court of Directors and the Civil Service of India was thrown open to competition. An *Act of 1854* provided for the appointment of Chief-Commissions to minor provinces in India. Finally comes the Act of 1858 which gave the death-blow to the rule of the E. I. Company, about which more will be said presently.

(32) SUPREMACY OF THE PRESIDENT OF THE BOARD OF CONTROL

Having reviewed Parliamentary legislation during 1784-1858 it becomes necessary now to examine the nature of the Double Government set up by Pitt's Act and the difficulties and defects of that system of Government. The Regulating Act proceeded on the theory that Parliament could *directly* control the actions of the Governors of the East India Company in India by sending out Englishmen as members of their

Councils or as Judges of the Supreme Court. But as this experiment led to disastrous consequences--particularly to the weakening of the Executive in India—it adopted a different method—namely that of *controlling* the policy of the Court of Directors in England, so far, of course, as it related to the political affairs of the E. I. Company, leaving the Directors the entire management of their commercial monopoly as well as their patronage. This was the principle underlying Pitt's India Act which created the Board of "six Commissioners for the affairs of India." But, soon, on account of various causes, all political power gravitated into the hands of the President of the Board of Control and the Directors were reduced to mere figure-heads satisfied with the 'patronage'. It is necessary to see how this was brought about.

One cause was the changes effected in the composition of the Board from time to time. Under the Act of 1784 it consisted of 6 Members who were to be Privy Counsellors. The Chancellor of Exchequer and two Secretaries of State were *ex-officio*, and other three were to be nominated. The inclusion of the two Secretaries and the Chancellor provided for the business of the Board being brought, when necessary, under the view and within the control of the Cabinet. But the active and practically the sole control of affairs rested with the nominated Commissioners whose salaries were chargeable to the revenues of India. By the Act of 1793 the First Commissioner was called the President of the Board of Control; the other two Commissioners might be appointed from outside the Privy-Council, and the Secretary of the Board might be a Member of Parliament so that his office became a party appointment. Under this change

the collective action of the Board became a mere fiction, and all power came to reside in the hands of the President who derived additional importance from his being a member of the Cabinet. This process of concentration of power was completed when the number of Commissioners came to be successively reduced and after 1841 the Board consisted only of the President, the first to hold office under the new conditions being Ellenborough.

Though the Board was given full powers of control over the political affairs of the Company it had no power to correspond with India independently of the Court of Directors. All correspondence had to pass through the Court of Directors. The Board was given full access to all the records and correspondence of the Company; the Court of Directors were required to supply copies of all orders and despatches sent to India within eight days of sending them and all despatches from India immediately on their receipt. No order could be sent to India without being first submitted to the Board for approval; full power was given to the Board to make alterations in the despatch, which the Court were bound to send in its altered form after, if they so desired, an exchange of opinion thereon; and if the Court failed to frame despatches within fourteen days, the Board might itself frame despatches which the Court was bound to send on. Further, a Secret Committee (limited in practice to the Chairman and Deputy Chairman of the Court) was constituted and sworn to secrecy, through which Committee the Board used to send secret orders to the Government of India, which the Secret Committee was bound to transmit as from themselves. Similarly, any despatches

from India marked 'secret' were to be recorded at the India Office in the Secret Committee and delivered to the Board without being seen by the Directors.

The tendency of the President of the Board to domineer over the Directors was emphasized by the procedure followed for the carrying on of correspondence with India. The method of correspondence was this: Every despatch that came from India went to the Examiner's Department, and the Chairman, his Deputy and the Senior Merchant, with the help of the Examiner framed the draft of the reply. It was then *privately* discussed between the Chairman of the Court and the President of the Board, any difference of opinion being removed at this stage, which was known as that of "previous communication." The draft—as now finally settled—was sent to the Committee of the Court to which it belonged. The Committee suggested changes in the draft, but they were practically of no avail. The draft was then discussed in the whole Court, and then forwarded to the President as an official communication from the Court. It will be thus seen that the President settled the draft *before* availing himself of the knowledge and experience of the Directors. When it is further remembered that he, as well as the Secretary of the Board were members of a political party and came in and went out of office according to the fate of their party, and that both were generally ignorant about the conditions of India, one can realise how the administration of India became entirely irresponsible. Nor could the Directors be an effective check over the President. Though six out of the twenty-four Directors were to be annually elected all formed a close circle. Re-election was the rule and most enjoyed a pretty long tenure of office

It was not the salary of £300 per annum that made them stick tenaciously to their post. Their real remuneration consisted in the exercise of patronage which was distributed as follows: Every year the number of appointments to be made in India was first ascertained, and it was divided into twenty-eight equal parts. Two were assigned to the Chairman and Deputy Chairman of the Court, two to the President of the Board, and the remaining twenty-four to the 24 Directors. It has been calculated that the value of each share of patronage was about £15,000. This patronage system produced two fatal results upon the position and tone of the Court of Directors. (1) It made them entirely subservient to the President, lest he should, by his Parliamentary influence, deprive them of their patronage, as Fox once threatened to do. (2) The system also made them grasping at every increase in the revenues, and at every extension in the territories, of India, for both increased their patronage and, therefore, power.

While thus the whole authority of superintendence, direction, and control of Indian affairs was passing into the hands of the President (who, of course, was a member of the Ministry), his irresponsibility to Parliament was being increased by a silent change in the attitude of the House of Commons towards Indian questions. Before Pitt's Act, the House of Commons, thanks to the frequent financial embarrassment of the Company and to the interest of Members like Fox and Burke, was well-informed about the state of affairs in India. In fact, as the monopoly of trade enjoyed by the East India Company was galling to the interest of those who were excluded from that monopoly, no opportunity was lost of

criticising the actions of the Court of Directors or of their servants in India. But after the Act of 1784 it became the constant anxiety of the Ministry of the day to keep the affairs of India away from the gaze of the House of Commons. This was found to be the more easy, as the commercial monopoly of the E. I. Company was partially relaxed in 1813 and wholly abolished in 1833. No doubt at the time of each renewal of the Charter, Committees were appointed, and very valuable evidence collected regarding administration in India; but the interest of Parliamentary debates was confined to the commercial monopoly of the Company. Little or no notice was taken of the great measures *e. g.* land-revenue settlements, public works, judicial administration, &c. that were being adopted in India by the servants of the Company.

The controlling hand of the President was more heavily felt in foreign affairs than in matters of internal administration. In fact it should never be forgotten "that the whole foreign policy of the E. I. Company was regulated by the President of the Board—that in the solution of the most vital questions—questions of peace and war—affecting the finances of the country, and therefore, the means of internal improvement, the Court of Directors had no more power than the Mayor and Aldermen of any Corporation Town. The happiness of the people of India was dependent less upon the will of a deliberative body of four and twenty English gentlemen, a large majority of whom had studied India under an Indian sky—who, as a body, had no connection with Party, no dependence on the fate of ministries, whose official lives did not hang upon an adverse vote, and who could therefore pursue from year's end to year's end

a consistent course of administrative conduct—than upon the caprice of a single man who may be gone to-morrow, who may preside over the India Board and govern India for a fortnight, and then be suddenly deposed by some gust of Parliamentary uncertainty, by the mistaken tactics of an unexperienced Party leader, or the neglect of an inefficient whip.”*

That the autocracy of the President—though it involved India in costly, unfruitful, and aggressive wars on the frontier, and though it led to the adoption of measures of doubtful legality and justice for territorial expansion at the cost of the Native States, did not, in practice, lead to serious political trouble was due (1) to the efficiency of some of the earlier incumbents of this office; (2) to the moral support, which the President was compelled to enlist, of the Cabinet as a whole for measures of importance; (3) to the vigilant check which many Directors who were also Members of Parliament exercised upon him from their seats in the two Houses; (4) and above all to the diligence with which harmony of views and methods was maintained by means of ‘Private Correspondence’ between the President in England and the Governor-General in India.

(33) DEFECTS OF DUALISM

It must have been seen that the Double Government had many defects. A certain division of authority between those who govern in India and those who control in England is, of course, inevitable in the governance of a distant Dependency. But under the Double Government,

* Kaye : Page 133 (Slightly changed.) Read John Dickinson :
 Chapters II, III, VIII

there was a further division of power between the President of the Board and the Court of Directors. There were perpetual squabbles between the two regarding the financial affairs of the Company, the maintenance of the King's army in India, the enjoyment of trade monopoly, and above all, the exercise of patronage. The highest officers in India were appointed by the Court but they could be recalled by the Crown. The position of the Governor-Generals particularly, appointed during this time, was very precarious as they had to serve two masters at home, and they managed to please the President by private correspondence. Lord Curzon in his *British Government in India* gives pathetic account of the trials and trepidations of these Governor-Generals. Speaking of Double Government he says* "Had a Committee been assembled from the padded chambers of Bedlam, they could hardly have devised anything more extravagant in its madness, or more mischievous in its operation". Thus the greatest defect of this system was its irresponsible character. There were as many as three authorities between which that responsibility was divided: the Court of Directors who could appoint officers and initiate policies; the President who could recall officers and thwart the actions of the Court; and the Governor-General who, on account of his great distance from either, could afford to set at naught the views of both and do things in his own way.

Such an arrangement was bound to prove harmful to the interests of the people of India and it was opposed to the fundamental principle of the British Constitution. As Lord Palmerston, in introducing the

* *British Government in India* Vol II. p 69

Government of India Bill of 1858, said "A principle of our political system is that administrative functions should be accompanied by ministerial responsibility—responsibility to Parliament, responsibility to public opinion, responsibility to the Crown." The Directors were responsible only to the Court of Proprietors and not to the people or Parliament of England, nor was the President of Board, though a member of the Ministry strictly responsible to Parliament through it.

A second defect was the cumbrous and dilatory method of administration. It involved an incredible amount of correspondence between England and India, with the inevitable result that a great deal of work was really done by those whom Burke called the "tyrants of the desk". Commenting upon this defect Palmerston said, "Before a despatch upon the most important matter can go out to India it has to oscillate between Cannon Row and India House....and its adventures between these two extreme points of the metropolis were often as curious as the familiar *Adventures of a Guinea*".

A further defect was the indifference of the House of Commons to the affairs of India. As Macaulay complained: a broken head in Cold Bath Fields produced a greater sensation among Members of Parliament than three pitched battles in India.

Nor finally, was the Government of a large country containing many Ruling Princes by a mercantile Company free from absurdity and anomaly.

In fact, though there was considerable diversity of detail as to the suggested remedy, all critics of the old system of Government agreed that it should be abolished and that the administration of India should be transferred from the Company to the Crown

(34) TRANSFER OF THE GOVERNMENT OF INDIA
TO THE CROWN

When the Charter of the Company was renewed in 1853, Parliament, as if prescient of the impending catastrophe of the Mutiny, provided that the Indian territories should remain under the Government of the Company "in trust for the Crown until it should direct otherwise." The Indian Mutiny of 1857 gave the deathblow to the old system. It was argued by many that the question of abolishing the East India Company should not be raised in Parliament until peace was restored in India. But the House of Commons resolved to take up that question without delay and two Bills were successively introduced. It appeared at one time as likely that they would be made the subject of party strife. The House of Commons, therefore, resorted to the procedure of adopting certain Resolutions embodying the principles of the two Bills. A third Bill based upon these Resolutions finally became "The Act for the good Government of India" of 1858. It in no way interfered with the details of Indian Government. It confined itself to the improvement of the machinery by which the Indian Government was to be thenceforward superintended and controlled *in England*.

Great apprehension was expressed at the time of the passing of the Act about the danger of the Government of India falling into the hands of the Ministers of the Crown. It was felt that there should be some check over the exercise of authority by them, and it was contended that the House of Commons, on account of its other preoccupations, would not be an effective check. The partisans of the East India Company said that an independent body like the

148 (35) EXCERPTS FROM QUEEN'S PROCLAMATION

Court of Directors was a better check than the House of Commons. In the Petition (framed by John Stuart Mill) that was submitted to Parliament on behalf of the East India Company,* this position was well argued. The administration of India cannot be vested in a Minister of the Crown without the adjunct of a Council composed of statesmen experienced in Indian affairs. Such a body should not only be qualified to advise the Minister but also, by its advice, to exercise a moral check over him. The Minister was likely to be influenced by private or public pressure. The Council ought to be a barrier also against the inroads of self-interest and ignorance to which he is exposed. If the Council was not a check, it would be a screen. In any case, a new Council would not have that authority which an established body like the Court of Directors possessed. But Mill's Petition proved of no avail to the Company. Its specious arguments and the misdeeds of the Company in India were exposed by Sir George Cornewall Lewis in a scathing speech made in the House of Commons. The Act of 1858 abolished the Court of Directors and the Board of Control altogether, transferred the Government, territories and revenues of India from the Company to the Crown, declared that India was to be governed by and in the name of the English Sovereign, authorized the appointment of an additional Principal Secretary of State and created the Council of India.

(35) EXCERPTS FROM THE QUEEN'S PROCLAMATION

This Part of the book will close fittingly with a few excerpts from the *Queen's Proclamation*:

* Keith : Vol. I, pages 298-319-

Now, therefore, we do by these presents, notify and declare that, by the advice and consent aforesaid, we have taken upon ourselves the said Government.

And we do hereby constitute and appoint him, the said Viscount Canning, to be our first Viceroy and Governor-General in and over our said territories, and to administer the Government thereof in our name, and generally to act in our name and on our behalf, subject to such orders and regulations as he shall, from time to time, receive through one of our Principal Secretaries of State.....

We hereby announce to the native princes of India, that all treaties and engagements made with them by or under the authority of the East India Company are by us accepted, and will be scrupulously maintained, and we look for the like observance on their part.

We desire no extension of our present territorial possessions; and, while we will permit no aggression upon our dominions or our rights to be attempted with impunity, we shall sanction no encroachment on those of others.

We shall respect the rights, dignity, and honour of native princes as our own; and we desire that they, as well as our subjects, should enjoy that prosperity and that social advancement which can only be secured by internal peace and good government.

We hold ourselves bound to the natives of our Indian territories by the same obligations of duty which bind us to all our other subjects, and those obligations, by the blessing of Almighty God, we shall faithfully and conscientiously fill.

Firmly relying ourselves on the truth of Christianity, and acknowledging with gratitude the solace of religion, we disclaim alike the right and the

desire to impose our convictions on any of our subjects. We declare it to be our royal will and pleasure that none be in anywise favoured, none molested or disquieted by reason of their religious faith or observances, but that all shall alike enjoy the equal and impartial protection of the law; and we do strictly charge and enjoin all those who may be in authority under us that they abstain from all interference with the religious belief or worship of any of our subjects on pain of our highest displeasure.

And it is our further will that, so far as may be, our subjects, of whatever race or creed, be freely and impartially admitted to office in our service, the duties of which they may be qualified by their education, ability and integrity duly to discharge.

We know, and respect, the feelings of attachment with which the natives of India regard the lands inherited by them from their ancestors, and we desire to protect them in all rights connected therewith, subject to the equitable demands of the State; and we will that generally, in framing and administering the law, due regard be paid to the ancient rights and customs of India.

When, by the blessing of Providence, internal tranquility shall be restored, it is our earnest desire to stimulate the peaceful industry of India, to promote works of public utility and improvement, and to administer the Government for the benefit of all our subjects resident therein. In their prosperity will be our strength, in their contentment our security and in their gratitude our best reward. And may the God of all power grant to us, and to those in authority under us, strength to carry out these our wishes for the good of our people.

PART III

BUREAUCRATIC GOVERNMENT

SECTION ONE

CENTRALIZATION

CHAPTER VIII

PARLIAMENTARY CONTROL

(36) A CENTRALIZED BUREAUCRACY

When the Crown assumed in 1858 direct responsibility for the Government of India, all powers—financial, legislative, and administrative—came to be centralized in the Secretary of State for India in Council on behalf of the Crown. In India also, as a necessary result, power came to reside in the hands of the Governor-General in Council who exercised rigid control over the local Governments in the Provinces. We may distinguish four tiers in the officialdom which now managed the affairs of India. At the top was (1) the Secretary of State for India in Council responsible to Parliament for the administration of India. (2) Below him was the Viceroy and Governor-General of India in Council who was at the head of the administration in India and who was “the man on the spot.” (3) Below him was a number of Provincial (or, as they were also called, Local) Governments or administrations under Governors-Lieutenant-Governors

or Chief Commissioners. These Governments did not enjoy any independent powers of their own but were the agents of the Governor-General in Council. (4) Finally, within the provinces a more or less uniform system of administration came to be established, the unit of which was the District, and the chief executive officer in which was the Collector-Magistrate or the Deputy Commissioner. The resulting form of administration may be best described as a 'Centralized Bureaucracy'. In this form administration is carried on by a hierarchy or gradation of officers, the lower officers being the agents of, and therefore entirely responsible to, those above them. The wishes of the people are never constitutionally consulted. This form of Government might be inevitable under certain conditions; nor need it necessarily be antagonistic to the interests of the governed. Its essence lies in nothing being done by the people, though a set of officials may presume to do a great deal of what they think to be for the good of the people.

The defects of this centralized Bureaucracy became patent even before the process of centralization was completed. They were partially removed by (1) adopting the converse process of Decentralization as between the Central and Provincial Governments, (2) the institution of Local Self-Government within the provinces, and finally, (3) by the establishment of Legislative Councils. An inquiry into the results accomplished or anticipated in each of these directions will form a proper introduction to the study of Responsible Government which is the subject of the Fourth Part of this book.

(37) THE SECRETARY OF STATE IN COUNCIL

We now take up for consideration the Secretary of State in Council, who stands at the top of the Indian Bureaucracy. The duties and powers of the Secretary of State in Council were comprehensively defined as all those duties and powers which were exercised by the East India Company and the Board of Control in England, and by the servants of the Company in India. In particular he was charged with the "superintendence, direction, and control of all acts, operations, and concerns which in anywise relate to the Government or revenues of India."

The position of the Secretary of State for India differed from that of the other four Secretaries of State (Home, Foreign, Colonial, and War) in the British Cabinet in two respects. (1) His salary and that of his Parliamentary and Permanent Under-Secretaries was placed on the revenues of India, and (2) he was given a Council which he was expected always to consult and in certain cases whose decisions were binding upon him.

That the Secretary of State should have a Council becomes obvious when it is remembered that generally he had no sufficient knowledge and experience to discharge duties so various and complicated as those connected with the administration of India. But the exact composition of the Council and its relation to the Secretary of State gave rise to great difference of opinion. The Council was not meant to be a screen as the Court of Directors were in the past. Neither was it to be the master of the Secretary nor a mere puppet in his hands. Its real position was that of advisers and for that purpose its members were to

possess the three requisites of intelligence, experience, and independence.*

The Council under the act of 1858 consisted of 15 members of whom eight were appointed by the Crown and seven were elected, in the first instance, by the Directors and subsequently by the Council itself. They held office during good behaviour but were removable on an address by both Houses of Parliament. They were debarred from sitting in Parliament. It was feared that otherwise they would become party men and their relations with the Secretary of State would be strained, especially after a change of Ministry.

The function of the Council was to conduct the business transacted in the United Kingdom in relation to the Government of India and the correspondence with India.

As the full responsibility for the Government of India was fastened upon the Secretary of State it was natural to arm him with the power of overriding his Council. But to check an abuse of this power two qualifications were imposed upon it: when the Secretary of State acted in opposition to a majority of his Council he was to state and place on record the reasons why he set aside their opinion; similarly any Councillor whose advice was not adopted could also place on record the reasons which induced him to give that advice. (2) The Secretary of State was bound to call his Council at least once a week.

In two cases the Secretary was bound by the majority of his Council; (a) in the case of the election of members to his Council, and (b) in the matter of expenditure of the revenues of India. Regarding the

* Keith : Vol. II, Lord Derby's Speech.

transmission of correspondence there were two exceptions to the general rule that all despatches to and from India should be laid before the Council : *viz*, the Secretary of State might, if he thought fit, issue orders on *urgent* matters without calling the Council together, in which case he was to place those orders before their next meeting ; similarly he might send out orders and instructions in *secret* matters without previously communicating those orders to the Council. The secret matters related to the carrying on of war, or diplomatic arrangements with the Native States.

From these main provisions of the Act of 1858 it is easy to infer what the intentions of Parliament were as to the relative positions of the Secretary of State and his Council, and the relations of both with the Government of India. Parliament did not wish to disturb the legislative and administrative powers that then rested in the Governor-General in Council. It imposed a Council of India as a check over the authorities in India and also over the Secretary of State ; and over all these three authorities Parliament, in the absence of any representative institutions in India, was to exercise a close and constant supervision.

(38) INDIFFERENCE OF PARLIAMENT

As a matter of fact, however, Parliament did not exercise a close and constant supervision over Indian affairs. It left everything to the Secretary of State as its agent. In theory its authority over the Indian Government is supreme.*

It is open to Parliament to exercise control either by means of direct legislation, or by requiring its approval to Rules made by the Secretary of State or

* M. C. Report : para 32.

the Governor-General in Council under delegated powers of legislation; it may control the revenues of India; finally it might exert its very wide powers of calling the responsible Minister to account on any matter of Indian administration. In practice, however, Parliament legislates for India only on two occasions; to make amendments in the constitution of India, and to authorise loans raised by the Secretary of State. Nor does Parliament directly control Indian revenue (apart from loans raised by the Secretary of State); or Indian expenditure (apart from military expenditure incurred beyond the Indian frontiers); As the salaries of the Secretary and the Under-Secretaries were paid out of the Indian revenues they did not furnish an occasion for discussion and criticism of their Indian policy. In fact, once a year, statement of the revenues and expenditure of India together with a "Moral and Material Progress Report" was submitted to Parliament. The Report was a cumbrous compilation and the interest of Parliament in the budget debate was nil. As Mr. Ramsay Macdonald admitted, "Parliament has not been a just or watchful steward. It holds no great debates on Indian questions; it looks after its own responsibilities with far less care than it looked after those of the Company; its seats are empty when it has its annual saunter through the Indian budget."*

Nor finally does Parliament avail itself to the fullest extent of the other means of making its opinion felt on matters of Indian administration *e.g.*, by questions, by amendments to the Address, by motions to adjourn, by resolutions, or by motions of no confidence. On the whole the Authors of the Montford

* R. Macdonald : p. 44.

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Report had no hesitation in saying that the interest shown by Parliament in Indian affairs was neither well-sustained nor well-informed. Before 1858 Parliament held regular inquests in Indian administration prior to each renewal of the Charter; but after 1858 it ceased to exercise control at the very moment when it acquired it. The Montford Report regarded this omission on the part of Parliament to institute regular means of reviewing the Indian administration as much responsible as any one cause for the failure to think out and work out a policy of continuous advance for India.

(39) SUBORDINATION OF THE COUNCIL TO THE SECRETARY OF STATE

The indifference of Parliament enabled the Secretary of State to reduce his Council to subordination. Instead of being a check over him, it became a tool in his hands. This was brought about in three ways: (a) in the matter of its composition, (b) its powers and (c) method of transacting business.

(a) By an Act of 1869 the Secretary got the right of filling all vacancies in the Council, and the tenure was changed from tenure during good behaviour to tenure for a term of ten years, further reduced to seven years by an Act of 1907. This had the effect of making the members subservient to the Secretary of State.

(b) Again though the Act of 1858 required the concurrence of a majority of votes at a meeting of the Council for incurring expenditure in India, this power of "Financial veto" was, as a matter of fact, of little moment. The Secretary of State would always have the moral support of the whole Cabinet for every important

proposal involving expenditure and the Council was bound to yield to the Cabinet. Further the circumstance that the Secretary of State could issue orders in secret or urgent matters without consulting the Council augmented his powers.

(c) The method of transacting business in the India Office and in the Council of India also tended in the direction of increasing the importance of the Secretary of State. In the India Office, work was divided among various Departments.

There was a permanent official at the head of each Department who was appointed by the Secretary of State. He having worked up a case placed it before a Committee of the Council. The Council worked through Committees corresponding to the Departments in the India Office and many Councillors served on more than one Committee. They were appointed on the Committees by the Secretary of State. It was before such a Committee that the head of the Department placed his file. The Committee then recorded their opinion on the file which was next sent on to the Permanent Under-Secretary of State. He took it to the Secretary of State who allowed him to issue orders on it or issued them himself, or allowed the Parliamentary Secretary to do so, or ordered the file to be taken before a full meeting of the Council. Only important work is taken before a regular meeting of the Council. On many matters the papers are simply kept for a period of days in the Council Reading Room and are taken to be approved if no member protests. Every despatch is signed by the Secretary of State alone and not by the members of his Council who form only an advisory, and not an executive Body

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(40) MINUTE CONTROL OVER THE GOVERNMENT OF INDIA

The indifference of Parliament and the subordination of the Council left the Secretary of State master of the field. He came to exercise complete control over the entire range of Indian Administration. This control was based upon the theory, previously mentioned, that the supremacy of Parliament over the affairs of India was absolute.* A few examples will show how this theory was established. (a) In 1870 Lord Mayo's Government as a whole protested at being required to pass the Bills which ultimately became the Contract Act and the Evidence Act. At that time a Law Commission was sitting in London to frame drafts of Bills and Codes which were then sent on to the Legislative Council of the Governor-General for adoption. The Secretary of State required the Government of India to accept the two Bills in the shape in which they had been recommended by the Law Commission. The Government of India protested on the ground that such Codes deprived the Legislative Council of all liberty of action. The Home Government though admitting the possible inconvenience and embarrassment said, "that the risk of serious embarrassment would become much greater if a clear understanding were not maintained as to one great principle which from the beginning has underlaid the whole system. That principle is that the final control and direction of the affairs of India rest with the Home Government, and not with the authorities appointed and established

* M. C. Report S. 34

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by the Crown, under Parliamentary enactment, in India itself.

"The Government established in India is (from the nature of the case) subordinate to the Imperial Government at Home. And no Government can be subordinate, unless it is within the power of the Superior Government to order what is to be done or left undone, and to enforce on its officers, through the ordinary and constitutional means, obedience to its direction as to the use which they are to make of official position and power in furtherance of the policy which has been finally decided upon by the advisers of the Crown."

(b) Again when Lord Northbrook attempted to assert the independence of his Government in fiscal matters, Mr. Disraeli's Government were equally decided in affirming their constitutional rights. "It is not open to question that Her Majesty's Government are as much responsible to Parliament for the Government of India as they are for any of the Crown Colonies of the Empire.....It necessarily follows that the control exercised by Her Majesty's Government over financial policy must be effective also."

Indeed the Government of India Act required the Governor-General in Council to pay due obedience to such orders as he may receive from the Secretary of State in regard to the Civil and Military Government of India. The Government of India was merely an *agent* of the Secretary of State. What power the Governor-General exercised in India was exercised on sufferance: it was due to his being "the man on the spot" and the head of an extensive system of administration removed by 6000 miles from the real seat of authority. It is true that the Governor

General exercised great powers and functions as the successor of those Native Rulers whom he had superseded. The exercise of such powers was not derived from English Charters or Parliamentary enactments. In spite of this, however, the Secretary of State exercised a rigid control over the Government of India in matters of Legislation, Finance, and Administration.

In Legislation.—The Indian Councils Act of 1861 gave to the Crown the power of veto over the Acts of Indian and Provincial Councils. But the Secretary of State required all bills to be introduced in the Indian and Provincial Councils to be submitted to him for his previous sanction. This was clearly laid down in the controversy between Lord Mayo and the Duke of Argyll, who was then the Secretary of State, over the Punjab Drainage and Canal Act. The Duke of Argyll declared that the prerogative of the Secretary of State was not limited to a veto of the measures passed in India. He said "the Government of India were merely Executive officers of the Home Government who hold the ultimate power of requiring the Governor-General to introduce the measure and of requiring also all the official members to vote for it."

Not only was every measure to be introduced in the Central or Provincial Legislative Council to be previously submitted to the Secretary of State for sanction, but every important alteration in the measure in its passage in the Legislature was to be similarly communicated for approval. Previous intimation to the Secretary of State was dispensed with in the case of unimportant or urgent matters. Such was the net result of the controversy between Lord Northbrook and Lord Salisbury in 1874 which was merely a

continuation of that between Lord Mayo and the Duke of Argyll. But when in 1875 Lord Northbrook passed the Tariff Act imposing a duty of 5 p. c. on imported cotton goods without referring the matter to the Secretary of State on the ground that it was urgent he was censured by Lord Salisbury who required telegraphic intimation to be given to the Secretary of State in the case of urgent legislation. This of course led to the resignation of Lord Northbrook. But the effect of the orders of Lord Salisbury was to deprive the Government of India of all initiative in and control over legislation in Central or Provincial Councils of India.

In Finance.—The Government of India Act of 1858 placed all financial powers in the Secretary of State and every project for novel or large expenditure, every revision of the pay of or increase in the establishments, every change in Imperial or Provincial Taxation, in fact every departure from the established policy had to be referred to the Secretary of State for information and sanction.

The control was equally minute in details of *Administration*.

Lord Minto complained in a private letter: "I used to imagine that the Secretary of State aimed only at directing great principles of Indian policy, and that the administration of the country rested with the Government of India, but there has been interference in everything. It only results in intense worry to the Viceroy, for, do what he will, the Secretary of State can not administer India." *

* Quoted in Sir Malcolm Seton's *India Office* p 81

CHAPTER IX

CONTROL OF THE GOVERNMENT OF INDIA OVER THE PROVINCIAL GOVERNMENTS

(41) FORMATION OF THE PROVINCES

Turning next to examine the relations of the Government of India with the Provincial Governments, let us first of all consider the formation of the provinces. It is unnecessary to go over once again the ground covered in the two Chapters on the territorial expansion of the East India Company. The different systems of provincial administration that came to be established were closely bound up with the course of that expansion. We may distinguish three stages in the growth of the provincial system. (1) Right up to the year 1833 the form of Government consisting of the Governor and his Council was the approved type, and the Act of that year proposed to provide the North-West Province which was then to be separated from the Presidency of Fort William with a Governor and Council. (2) The Directors, however, proposed to appoint a Lieutenant-Governor to the North-West Province and an Act of 1835 gave effect to the proposal. Bengal continued to be under the Governor-General of India, and its administration suffered on account of the prolonged absences of the Governor-General, all power falling into the hands of Secretaries appointed by him. The Act of 1853 authorised the Court of Directors to appoint either a Governor in Council for Bengal or ask the Governor-General in Council to appoint a servant of the

Company of more than 10 years' standing to be the Lieut.-Governor. The latter alternative was adopted. Unlike the Governors, the Lieut.-Governors were appointed by the Governor-General in Council from among the servants of the Company and they had no Executive Council. (3) The Act of 1854 provided for a still simpler form of provincial government. It empowered the Governor-General in Council, with previous sanction of the Home Authority, to take by proclamation under his immediate authority and management any part of the Company's territories and provide for its administration. In practice, Chief Commissioners were appointed who were technically under the immediate authority of the Governor-General in Council and to them were delegated such powers as were not required to be reserved to the Central Government. The status of the Chief Commissioner was lower than that of the Lieutenant-Governor.

The three types being thus established and the Governor-in-Council form being confined to the old Presidencies of Madras and Bombay, the remaining provinces were given or deprived of one form or the other according as they gained or lost in territory as a result of territorial expansion or administrative redistribution. Thus the Punjab was at first placed under a Chief Commissioner; but when, after the Mutiny, the Delhi territory was added to it, it became a Lieutenant-Governorship. In Burma the amalgamation of the conquests made by First and Second Burmese Wars led in 1881 to the whole province being placed under a Chief Commissioner. Upper Burma was annexed in 1886, and in 1897 Upper and Lower Burma were united and raised to the status of a Lieutenant

Governorship. The Kingdom of Oudh, after annexation in 1856, was placed under a Chief Commissioner. In 1877 it was merged into the Lieutenant-Governorship of the North-West Province and the name of the two Provinces was changed into the United Provinces of Agra and Oudh by Lord Curzon in 1902. The Central Provinces formed in 1861 continued to be under a Chief Commissioner throughout though Berar was amalgamated with them in 1903.

The latest instance where redistribution of territories was made ostensibly for the purpose of better administration was the Partition of Bengal in 1905. To the old Presidency of Fort William, Assam had been added in 1826. It was separated from Bengal and placed under a Chief Commissioner in 1874. In 1905 the still unwieldy province of Bengal under a Lieutenant-Governor was divided into two Lieutenant-Governorships. The Western half retained the old name of Bengal and the old seat of Government at Calcutta, whilst the Eastern half was augmented by the addition of Assam, previously under a Chief Commissioner, and styled Eastern Bengal and Assam with its capital at Dacca.

One can see the tendency towards centralization operating throughout this period in the creation of Lieutenant-Governorships and Chief Commissioner-ships for provincial administration. Also the provinces were grouped and regrouped under military, political or administrative exigencies or conveniences of the moment, often against the wishes of the people. Administrative efficiency and not the wish or interest of the people or province concerned was the deciding factor.

(42) LOCAL GOVERNMENTS BEFORE THE REFORMS

As a result of the changes described in the preceding section British India, before the Reforms, consisted of nine major Provinces and six lesser charges. Each of these 15 charges was called a Local Government. All alike were under the superintendence and control of the Governor-General in Council. But important differences existed between the status of the several classes of Local Governments. We may gather the Local Governments into five categories.

(a) *The Three Presidencies.*—Historically they were even prior to the Government of India. Madras and Bombay have always enjoyed the privilege of the Governor-in-Council form of Government. Bengal after many vicissitudes also came to have the same form after 1912. The Governors were appointed by the Crown, being usually persons of rank and experience in England. In an emergency the Governor can overrule his colleagues but otherwise decisions are those of a majority. Presidency Governments still enjoyed same relics of their former independence; they were Extraordinary Members of the Governor-General's Council if meetings of the Council should happen to be held in the Presidency; they had the right to correspond direct with the Secretary of State unless financial issues were involved; they could appeal to him against orders of the Governor-General in Council; they had full discretion in selecting for important offices under them; and they were less liable to supervision than other provinces in the administration of their revenue and their forests

(b) *The Four Lieutenant-Governorships.*—They were constituted by acts of Parliament. N.-W. Province (1835,) Bengal (1854), Punjab (1859). Fresh powers to constitute Lieutenant-Governorships were given by the Indian Council's Act 1861. Under this Statute, Burma was raised to this status in 1897 and each of the two halves of partitioned Bengal in 1905. Lieutenant-Governors were appointed by the Governor-General subject to the approbation of the Crown. They must have served for at least 10 years in India. The extent of their authority may be declared by the Governor-General in Council. The maximum salary was fixed by Act of Parliament. Though the oldest and the heaviest charge (the U. P.) had no Executive Council, the newest province of Behar and Orissa had one. But the Executive Council did not materially alter the relation of the Lieutenant-Governor with the Government of India.

(c) *Central Provinces and Assam.*—They came next. In theory the Chief Commissioner administered the province as a delegate of the Governor-General who was competent to give all necessary orders and directions for its administration. But, in practice, the powers entrusted to him were often as wide as those of the Lieutenant-Governor and with the creation of the Legislative Council in Assam and in Central Provinces any distinction in administrative methods vanished.

(d) *Baluchistan and North-Western Frontier Province.*—These two form a group by themselves. They are administered by Chief Commissioners who are also Agents to the Governor-General in respect of political relations in the adjoining tribal territories; they are in fact more directly than any of the foregoing provinces under the control of the Government of India- acting

through its Foreign and Political Departments, both because political questions are of preponderant importance and also because they lack the financial resources and powers which the more settled provinces enjoy. Of the two, British Baluchistan was formed out of the territory extending for the most part over the tableland beyond the mountain range which forms the North-West boundary of India. The nucleus of this Province was the district of Quetta occupied in 1876 and purchased from the Khan of Khilat. To this were added certain districts acquired from Afghanistan in 1879 by the Treaty of Gandamak and other adjacent vast territories. The whole was formed into a Chief Commissionership in 1887. The 2nd namely the North-West Frontier Province was created by Lord Curzon in 1901, for purposes of political security by detaching certain Punjab Districts.

(e) *Minor Administrations*.—Under this category come Coorg annexed in 1834 and administered by the Resident in Mysore; Ajmere—ceded in 1818 is similarly administered by the Agent to the Governor-General in Rajputana. Andaman and Nicobar Isles—are administered by the Superintendent of the Penal Settlement of Port Blair as Chief Commissioner; Delhi—comprises a small tract enclosing the new capital.*

(43) FUNCTIONS OF THE GOVERNMENT IN INDIA

Having considered how the provinces were formed let us next consider the diverse duties of Government in India. "Government" means much more to the people in India than it means in the West. It is a paternal government. At a time when a great

* M. C. Report s. 121—23.

controversy was going on in England as to the functions of government, and when writers like Mill and Herbert Spencer were opposed to any extension of the sphere of State-intervention in the affairs of the individual, a system of Government was established in India which touched the people almost at every point. The British administration had to do many things here which in England are done by private effort and organization. A passage in the Report of the Decentralization Commission describes the multifarious functions of Government in India.

“The Government (in India) claims a share in the produce of land, and save where, as in Bengal, it has commuted this into a fixed land-tax it exercises the right of periodical re-assessment of the cash value of its share. In connection with its revenue assessments it has instituted a detailed cadastral survey, and a record of rights in the land. Where its assessments are made upon large landlords, it intervenes to prevent their levying excessive rents from their tenants, and in the Central Provinces it even takes an active share in the original assessment of landlords' rents. In the Punjab, and some other tracts, it has restricted the alienation of land by agriculturists to non-agriculturists. It undertakes the management of landed estates when the proprietor is disqualified from attending to them by age, sex, or infirmity or occasionally, by pecuniary embarrassment. In times of famine it undertakes relief works and other remedial measures upon an extensive scale. It manages a vast forest property and is a large manufacturer of salt and opium. It owns the bulk of the Railways of the country and directly manages a considerable portion of them and it has constructed

and maintains most of the important irrigation works. It owns and manages the postal and telegraph system. It has the monopoly of note-issue and it alone can set the mints in motion. It acts, for the most part, as its own banker, and it occasionally makes temporary loans to Presidency Banks in times of financial stringency. With the co-operation of the Secretary of State it regulates the discharge of the balance of trade as between India and the outside world, through the action of the Indian Council's drawings. It lends money to Municipalities, Rural Boards, and agriculturists, and occasionally to the owners of the historical estates. It exercises a strict control over the sale of liquor and intoxicating drugs not merely by the prevention of unlicensed sale, but by granting licenses for short periods only, and subject to special fees which are usually determined by auction. In India, however, the direct responsibilities of Government, in respect of Police, Education, Medical and Sanitary operations, and ordinary Public Works are of a much wider scope than in the United Kingdom. The Government has further very intimate relations with the numerous Native States, which collectively cover more than one-third of the whole area of India, and comprise more than one-fifth of its population. Apart from the special functions narrated above, the Government of a sub-continent containing nearly 1,800,000 square miles and 300,000,000 people is itself an extremely heavy burden and one which is constantly increasing with the economic development of the country and the growing needs of populations of diverse nationality, language, and creed."

(44) CENTRALIZATION

It is obvious that the functions enumerated above cannot be discharged by a single organization. In every considerable country there are, in addition to the Central Authority, what are called Local Governments, and the relations between the two parts of Government present some of the most difficult problems of practical administration. Now the student must grasp that from the beginning no attempt was made to draw a line of demarcation between the functions belonging to the Government of India and those belonging to the Local Governments. Though some *e.g.* defence, foreign and political relations, currency and mint, customs, posts and telegraphs were managed by the Government of India, the latter exercised a rigid control over the provinces in the administration of subjects that were entrusted to them.

It was inevitable that in the absence of any clear division of functions between the Central and Provincial Governments, all authority should tend to concentrate in the hands of the Central Government. Let us glance at the history of this process. The three Presidencies were independent of each other up to 1773. The Regulating Act of that year gave the Governor-General of Bengal the right of controlling the two remaining Presidencies, and the Acts of 1793 and 1813 extended and emphasized this right. But on account of the difficulties of communication the Governments of Bombay and Madras enjoyed a very large measure of independence in administration and also exercised the right of correspondence with the Home Authorities. The

question as to the proper functions of the Government of India assumed importance with the extension of the territories of the Company and received special notice in the Charter Act of 1833 and the celebrated Despatch of the Court of Directors which is an exposition of the Charter Act. This Despatch pointedly refers to the difficulty of drawing a line of demarcation between the functions of a Central and Local Government. "It is impossible for the Legislature, and it is equally so for us in our instructions, to define the exact limits between a just control and petty, vexatious, meddling interference."

Circumstances tending towards Centralization.—In view of the inherent difficulty of drawing a precise line between these relations the Despatch of 1834 relied upon the practical good sense of the Governor-General in Council to determine it. But on account of the following circumstances the tendency towards centralization gained the upper hand*: (a) The natural tendency of strong Secretariats to absorb functions more appropriate to subordinate authorities. (b) The increasing ease, rapidity and volume of postal and telegraphic communication. (c) The spread of the English language, and the growth of solidarity and of a national feeling, among the educated classes in the various provinces. (d) The material development of the country, the vast improvement in the means of communication within India itself and with the outside world, and the high standards to which her administration was expected to conform. (e) The increasing interest taken by Parliament in the details of Indian Administration, which necessarily

*Report of the Royal Commission on Decentralization, para 47.

tends to a closer check over the actions of the Local Governments and of the Government of India itself.

Control in Practice.—Let us examine how the powers of superintendence, direction and control were, in practice, exercised by the Government of India over the provinces in matters of Finance, Legislation and Administration.

Finance.—The entire revenues of the country were vested in the Governor-General in Council by the Act of 1858 and the Provincial Governments could raise or spend not a single rupee on their own account. Though under the system of Provincial Settlements (begun by Lord Mayo in 1870, and perfected by Lord Hardinge in 1912) larger powers were given to the Provinces, their tutelage to the Government of India was still considerable.

The whole theory of the provincial settlements was based not on what a province collected by way of revenue, but on what the province required for expenditure to keep up a certain standard of administration. Whatever surplus revenue the Central Government received from the more productive provinces it spent upon the administration, development, or defence of the unproductive provinces like the Frontier Province, Burma etc. The ultimate responsibility of the Government of India for the solvency of each of the Provincial Governments made them very exacting in their control over provincial expenditure and their interest in the revenue collected by a Provincial Government made them equally watchful of the success or otherwise with which the province played the part of a tax-gatherer on their behalf. There were various ways of exercising this financial control (a) all provincial budgets were

carefully scrutinised and required sanction; no province could budget for a deficit, or could go below a minimum cash balance which it was always required to maintain with the Central Government. (b) Again, in matters of expenditure, the spending authorities were bound by a series of financial Codes of Instructions such as the Civil Service Regulations, the Civil Account Code, the Public Works Code etc. The Provincial Governments could not create new appointments or raise emoluments beyond a certain narrow limit; (c) a Provincial Government could not impose a new tax without the previous sanction of the Central Government; (d) nor could it borrow money, either in England or in India, for capital expenditure. The Government of India advanced money to the Provincial Governments if at all the latter wanted to borrow.

In Legislation.—The absolute subordination of the Government of India to the Secretary of State in this matter has been referred to already. The control over provincial legislation followed as a corollary from that position. We shall trace in a subsequent Chapter the rise of the Legislative Councils in the Provinces of India. It is sufficient to state here that as between the Governor-General's Legislative Council and the Provincial Legislative Councils there was no definite line of demarcation like the one we find in the federal form of Constitution. Though the Provincial Council was theoretically competent to range over the whole field of legislation, its powers were restricted, in practice, in two or three ways. (1) In the first place the majority of the Councils were of later origin and growth. A great part of the legislative field therefore,

was occupied by the enactments of the Central Legislative Council. Particularly a large body of laws dealing with important subjects like crime, marriage, succession, contracts, transfer of property, business, and industries, and public health, was codified by the Central Council. (2) Though the Central Council generally did not consider laws of a Provincial application, its power of concurrent legislation was undoubted and was frequently exercised. Thus it passed the Deccan Agriculturists' Relief Act (Bombay) 1879; the Bengal Tenancy Act 1885; the Madras Civil Courts Act 1887; the Allahabad University Act 1887; the Lower Burma Court's Act 1900; and the Punjab Alienation of Land Act 1900. Not only could thus the Central Legislative Council encroach upon the Provincial field, but (3) every project of legislation in a Provincial Council had to be submitted to the Government of India and the Secretary of State for previous sanction; every important change in the Bill made during the passage of the Bill in the Council had to be similarly communicated and got approved of; and no Provincial Bill could become an Act before it was assented to by the Governor-General.

In Administration.—Here the control was too general and extensive to be described in a few simple propositions. In part the control was the direct result of the financial control which has been previously mentioned; in part it was due to the necessity of keeping administration uniform in a vast country like India. The Public Services which administered in the Provinces were recruited in England by the Secretary of State and the conditions of pay, promotion, leave, pensions etc. of them were fixed by that authority. Similarly in matters of business and

industry, as the Provinces were brought into very close contact uniformity was demanded in such matters as statistics, patents, copyright, insurance, income-tax, explosives, mining etc.

Further, as the Provincial Governments were mostly occupied with the routine work of administration it became the distinct duty of the Government of India to lay down policies of reform and progress in the shape of Resolutions. These often were based upon the Reports of Commissions or Committees appointed from time to time by the Supreme Government to investigate the working of Departments with which the Provincial Governments were primarily charged. Often a Commission recommended the appointment of advising or inspecting Officers at Head-quarters to co ordinate the results of Provincial Administration. Lord Curzon was particularly fond of appointing such officers and often they were got from England. In addition to these occasions of interference which were common to all Provinces, the Supreme Government frequently exercised the right of issuing instructions to particular Local Governments in regard to matters which may have attracted their attention from the numerous reports and returns which each Government was required to submit to them. And finally, considerable interference resulted from the Central Government having to attend to the appeals made to them by persons dissatisfied with the action or orders of a Provincial Government.*

From this account of the relations between the Central and Local Governments it is abundantly clear that these relations were in no way the result of a

* Report of the Decentralization Commission on chapter II

precise definition of the spheres of Central and Local Governments which obtains in a Federal Constitution. As the Decentralization Commission admitted:* "the present discrimination between the functions of the Imperial and the Local Governments, and the extent of the control normally exercised by the former over the latter, are the results of gradual administrative evolution." The Government of the country was one; the Provinces, in spite of the considerable powers they enjoyed, were strictly the 'agents' of the Central Government. The justification for this minute and multifarious control of the Secretary of State over the Government of India and of the latter over the Local Governments was that there was no constitutional *popular* check over the Central and Provincial Governments *in India* itself. Parliament, therefore, as the custodian and guardian of the Indian people was compelled to exercise through the Secretary of State a detailed control over Indian affairs in discharge of its own responsibilities.

Evil Effects of Centralization.—To the evil effects of over-centralization testimony is borne by many writers on Indian Administration. Sir O'Moore Creagh said that the state of affairs was bad enough in 1909 when he joined the Government of India and became infinitely worse in 1914 when he left it.† And this, in spite of the recommendations of the Royal Commission on Decentralization! But such was bound to be the case. In the absence of clear definition of the relations between the Government of India and the Local Governments, the extent of

*Report of Decentralization Commission : para 45.

† Indian Studies,

interference depended entirely upon the personality of the Governor-General and the amount of control exercised over him by the Secretary of State. The Governor-General may demand information upon any subject, and as the test of efficiency lay in its immediate production, the Departments perpetually called upon the Provincial Governments to submit information on all imaginable subjects, great and small.

CHAPTER X

CENTRALIZATION WITHIN THE GOVERNMENT

(45) THE GOVERNOR-GENERAL IN COUNCIL

Having considered in the last Chapter how responsibility to Parliament resulted in detailed control over Indian administration we shall now examine how *within* each Government, Central as well as Provincial, there was a tendency for all power to concentrate in the hands of the head of the Administration.

Let us first consider the Governor-General and his Executive Council. The Governor-General of India had always a Council associated with him in the transaction of business. In fact the Governors of the Presidencies in India and of most English Colonies in other parts of the world had Councils of their own. But there are two points about the development of the Council of the Governor-General which distinguish it from similar Colonial Councils *e.g.*, in America (1) The Colonial Councils, consisting mainly of the Heads of the Departments were of an advisory character with the result that the orders of the Colonial Government were described as the orders of the Governor and not of the Governor-in-Council. In India the Council was not only advisory but also executive so that the orders of the Governor (and of the Governor-General) are described as the orders of the Governor (or Governor-General) in Council. (2) In the

Colonies there was a second Council for the purposes of legislation. In India the Council of the Governor-General, (and of the Governor) *itself* was invested with the power of making Regulations. The importance attached to the law-making function of the Executive Council was small in the beginning; but it came to be emphasized with the growth and complexity of administration and the extension of territories. The interesting result was that the Executive Council *expanded* into the Legislative Council—a process which will be described fully in another Chapter.

Character of the Council up to the Councils Act of 1861.—The history of the Council in its executive capacity dates from the Regulating Act. The defect of the Regulating Act which made the vote of the majority of the Council binding upon the Governor-General, (who had only a casting vote), was removed by the Act of 1786, chiefly at the insistence of Lord Cornwallis. That Act empowered the Governor-General to override the majority of the Council in special cases and to act on his own responsibility. This completely changed the character of the Council. From a set of obstructionist colleagues it was transformed into a body of submissive advisers. As the Members of the Council were generally servants of the Company who had long served in India and who, therefore, possessed intimate knowledge of Indian affairs which the newly-arrived Governor-General usually lacked they gave him their opinion on matters that came before them. And though the Governor-General was not bound to accept that opinion and act accordingly and though he was individually and effectively responsible for every act of the Government, the Members collectively exercised a useful check over the Governor General

But in course of time a change occurred which greatly modified this character of the Council. The change was due to the abandonment of the earlier method of transacting business. At first all papers were submitted to all members of the Council in the order of their seniority and, therefore, first to the Governor-General. The inconvenience of this procedure became intolerable when every extension of territory added to the work of the Council and the Governor-General had to be absent from his capital for months together on account of the distracted state of the country. There were no roads, or railways, or telegraphs, and either there was an inconvenient accumulation of public work or the Governor-General transacted it without consulting his Council. The Council was thus reduced to second-rate importance and the situation became so impossible that Lord Dalhousie proposed radical changes in the procedure of the Council. It was, however, reserved for his successor, Lord Canning, to carry them out.

Introduction of the Departmental System.—The principle of specialization had been already introduced into the Council by the appointment, in 1834, of an expert member for law, and in 1859 for finance. It was along this line of specialization and departmentalization that Lord Canning proceeded. When the Act of 1861 gave the Governor-General power "to make rules and orders for the more convenient transaction of business", he introduced what in effect became the 'Portfolio System'. Each Member was placed at the head of one or more Departments, and made responsible to the Governor-General. The Act of 1861 also raised the number of members to five. In 1874 a *sixth* Member (for Public Works purposes)

was added, but for a number of years after 1880 this post was left vacant. It was Lord Curzon who created a new Department for the promotion of Commerce and Industry in charge of a new Member (now again the sixth Member). During his time also another change took place. Before that time the Military Department was placed in charge of an Ordinary Member of the Council—always a soldier but precluded from holding a command in the army during term of office—and distinguished soldiers like Sir George Chesney had held the office. The Military Member remained at Head Quarters and was the constitutional adviser of the Viceroy on questions relating to the Army. The Commander-in-Chief was responsible for promotions and discipline and movement of troops, but many times his duties prevented him from attending regularly in Council. He had to submit his proposals through the Military Department. Lord Kitchner when he came out to India in 1902 did not like this arrangement and proposed to create a new Army Department of which he was to be the head and responsible for the whole Military administration. Lord Curzon protested that this proposal had the tendency to concentrate military authority in the hands of the Commander-in-Chief and to subvert the authority of the Civil power by depriving it of independent Military advice. But no heed was paid to the protests of Lord Curzon and he, therefore, resigned in 1905.* Since then the Commander-in-Chief who is at the head of the Indian Army also represents the Army Department in the Executive Council of the Governor-General.

* Sir Thomas Raleigh Introduction to the speeches of Lord Curzon.

Internal Working of the Council.—We get an insight into the internal working of the Council from the writings of those who had first-hand experience *e.g.* Sir William Hunter, Sir John Strachey, Sir John Chesney and Lord Curzon. Thus Sir William Hunter says in his *Life of Lord Mayo*: “All routine and ordinary matters were disposed of by the Member of the Council within whose Department they fell. Papers of greater importance were sent, with the initiating Member’s opinion, to the Viceroy, who either concurred in or modified it. If the Viceroy concurred, the case generally ended and the Secretary to the Department worked the Member’s note into a letter or Resolution to be issued as order of the Governor-General in Council. But in matters of weight the Viceroy, even when concurring with the initiating Member’s view, often directed the papers to be circulated either to the whole Council or to certain of the Members whose views he might think it expedient to obtain on the question. In cases in which he did not concur with the initiating Member’s views, the papers were generally circulated to all the Members or the Governor-General ordered them to be brought up in Council. Urgent business was submitted to the Governor-General directly by the Secretary of the Department under which it fell; and the Viceroy either initiated the order himself or sent the case for initiation to the Member of the Council at the head of the Department to which it belonged.”

Substantially the same picture is presented by Lord Curzon: * “An immense amount of administrative work of the routine type does not go before the

* *British Administration in India* Vol II p 123-24

Council at all. It is discharged on his own responsibility by the Member of the Council who is the head of the Department concerned. If he is convinced of its special importance, he refers it to the Viceroy either personally, or through the Secretary of the Government in his Department who sees the Viceroy once a week and takes his orders. The Viceroy can, if he please, circulate the papers and refer the case to the Council, with or without his recorded opinion, and the matter is then brought up at the next meeting. Where two or more Departments differ about a case in which they are involved a similar reference is invariably made. The Secretary attends, states the case, takes the orders of the Council and is responsible for seeing to their execution." It will be seen that the Departmental Secretary is a Secretary to Government and not to the Member in charge of the Department. His position was thus described by the Decentralization Commission.* "It corresponds very much to that of the Permanent Under-Secretary of State in the United Kingdom, but with these differences that the Secretary is present at Council Meetings; that he attends on the Viceroy, usually once a week, and discusses with him all matters of importance arising in his Department; that he has the right of bringing to the Viceroy's special notice any case in which he considers that His Excellency's concurrence should be obtained to action proposed by the Departmental Member of Council; and that his tenure of office is usually limited to three years. The Secretaries, the Deputy Secretaries, and Under-Secretaries are generally Members of the Indian Civil Service."

* Report of the Decentralization Commission, para 20

Councillors become mere Departmental Heads.—It is clear from these extracts that the Council from being at one time a collective check over the Governor-General became in course of time a group of Departmental Heads. The Members of the Council found their position assailed from two opposite directions. On the one hand, the growth of centralization added to the strength of the Secretaries who had access to the Viceroy independently of the Members. The Viceroy, on the other hand, freely interfered with business in all Departments at all stages. Thus between the Viceroy above them, and their Secretaries below them, the Members lost a great deal of their initiative and power. Many writers agree in the view that the Governor-General dominated over his Council and interfered with the working of Departments to an extent which made the responsibility of the Members of the Departments a mere farce.

(46) THE VICEROY AND GOVERNOR-GENERAL

We must now explain how the Governor-General came to exercise such wide powers in his Council. When India was transferred to the Crown in 1858 the Governor-General became the "Viceroy," appointed by Royal Warrant, his term of office being fixed at five years. As Mr. Ramsay Macdonald, Labour Premier for the second time, says*, the Viceroy performs three great functions. He personifies the Crown, he represents the Home Government, and he is the head of the Indian Administration.

The first is now his proper function. He is the Crown visible in India, the ceremonial head of the

* The Government of India p 57

Sovereignty, the Great Lord. He is the seat of justice and catches up in himself, by virtue of his office, the historical traditions and sentiments of rulership."

His position as the Viceroy—in which capacity he deals with the Ruling Princes of India—should be distinguished from his position as the Governor-General in which capacity he is the representative of the Home Administration, and the Head of the Government of India. Lord Curzon thus comments upon the double appellation of Viceroy and Governor-General.*

"The distinction is held to be that where the Governor-General is referred to as the statutory head of the Government of India he is designated Governor-General: where he is regarded as the representative of the Sovereign he is spoken of as Viceroy. The latter title however has no statutory sanction, and is the result merely of usage and convention."

As the representative of the Home Government he is bound to carry out the views of the Ministry on all important questions. *e. g.*, Fiscal Policy, Frontier Policy, Foreign Relations, Constitutional Reform. He resigns in case of disagreement with the Home Government on such vital issues. Thus Lord Northbrook had to resign because he would not carry out the Fiscal and Foreign Policy of the Home Government. Lord Curzon had to resign because his views regarding the constitutional position of the Commander-in-Chief of India did not find support with the Home Authorities.

The varied and onerous functions of the Viceroy and Governor-General have been described in glowing

* British Government in India Vol II p. 49

terms by Lord Curzon*: "The Viceroy very soon finds out that the purely Viceregal aspect of his duties is the very least portion of them, and the Court life, in which he is commonly depicted by ignorant people as revelling, occupies only the place of a compulsory background of his every-day existence. He soon discovers that he is the responsible head of what is by far the most perfected and considerable of highly organized governments in the world.

He is the head, not merely of the whole Government, but also of the most arduous Department of Government, *viz.* the Foreign Office. There he is in the exact position of an ordinary Member of the Council, with the difference that the work of the Foreign Department is unusually responsible, and that it embraces three spheres of action so entirely different and requiring such an opposite equipment of principles and knowledge as to the conduct of relations with the whole of the Native States of India, the management of the Frontier Provinces and the handling of Frontier tribes, and the offering of advice to His Majesty's Government on practically the entire Foreign Policy of Asia, which mainly or wholly concerns Great Britain and its relation to India.

But the Viceroy, though he is directly responsible for this one Department, is scarcely less responsible for the remainder. He exercises over them a control which is, in my judgment, the secret of efficient administration".

Though the Viceroy is no longer the President of the Indian Legislature he has often, in public utterances, to defend the policy of Government. He is

* British Government in India Vol II. p 112-14

expected by the public to have a policy on every subject *e. g.*, Finance, Railways, Education, to reform every branch of administration, to redress every grievance, real or imaginary, and be accessible and sympathetic to all. In addition, he has to be on tour through British India and visit Indian States and reply to the addresses of various Bodies, Chambers and Associations. All this imposes a heavy burden of work upon the Viceroy.

As to the qualifications a Viceroy should have to discharge such multifarious duties Lord Curzon says.* "Apart from strength of character, courage and sympathy with the people committed to his care, the principal desiderata in a Viceroy are undoubtedly some familiarity with public affairs, some experience in public administration, and some power of speech."

Lord Curzon has narrated the intrigues and controversies that used to take place when the appointments to the Governor-Generalship of India were made in former times. Things seem to be better now. Usually the Crown makes the appointment on the recommendation of the Prime Minister who consults such of his colleagues as he chooses: The viceroy would seem to be less dependent now upon the Home Government than formerly, and need not resign because of a change of Ministry in England. As Lord Curzon says†: "It is a matter of congratulation that, whereas in earlier times, and indeed as recently as the days of Lord Northbrook and Lord Lytton, a Governor-General was apt to resign when a Government of different political complexion from that by which he had been appointed came into power, we are

*British Government in India Vol. II. p. 55.

†British Government in India Vol. II. p. 9

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now familiar with the spectacle of the Viceroy, as a great public servant, superior to the political passions of the hour, remaining at his post and serving faithfully the Home Government, from whichever party it may be drawn."

(47) HIS DOMINATION OVER THE COUNCIL

It is now easy to see how the Viceroy should come to have a preponderating influence over his colleagues. Consider first the colleagues. They are appointed by His Majesty on the recommendation of the Secretary of State who would naturally consult the Viceroy. This made the Ordinary Members entirely subservient to the Governor-General to whom they owed their recommendation and to whom they looked up for further promotion. Further as the majority of the Ordinary Members was drawn from the Indian Civil Service, obedience to superior authority was their ingrained characteristic. Sir O'Moore Creagh, Commander-in-Chief of India (1909-1914) said "the mental attitude of the Members of the Council to the Governor-General is one of obsequious respect, which causes them—with rare exceptions—to treat his slightest wish as a Khat-i-Sherif, to be disregarded at their peril. When such a wish is prefaced in the Council, as is frequently the case, by the announcement, that the proposal under discussion emanates from the Secretary of State there is rarely any opposition to it, no matter how impolitic it may be. I do not think that individuality or independence are wanted in the Council."* Next to the Members drawn from the Indian Civil Service there was the practice of one or two Members being

* Sir O'Moore Creagh Indian Studies, 101

appointed from the Civil Service in England. Though such Members were expert in their own work *e.g.* Finance, Commerce &c., their ignorance of Indian conditions and the jealousy with which they were regarded by their Anglo-Indian confreres made them habitually look up to the Governor-General for support. The Indian element of the Council also was not particularly known for independence of view and action. As the tenure of office was for five years only, the expectation of promotion and other jobs *e. g.* a place in the Council of the Secretary of State or Lieutenant-Governor or Chief Commissionership, operated in the same direction.

From the composition of the Council let us turn to the method of transacting business in the Council.

(1) The Rules and Regulations for the convenient transaction of business in the Council made, under Section 8 of the Act of 1861, by the Governor-General are kept absolutely secret and are liable to change at the will of the Governor-General alone. He thus exercises an enormous amount of discretion as to the mode of distributing work among the Departments and of assigning the Departments to the Members of the Council.

(2) Again the Governor-General could appoint any place within British India for the meeting of the Executive Council, and he and *one* Ordinary Member formed the legal quorum for the transaction of business. This very small quorum was fixed at a time when there were only three Members of the Council of the Governor-General; but it was not changed though the number of Councillors had increased to six or seven. It thus became possible for the Governor-General to consult one or two selected

Members of his Council and claim to have consulted his whole Executive Council. Properly speaking, however, such "surreptitious meetings" as Sir O'Moore Creagh characterised them, ought to be distinguished from formal meetings of the Council for which a convening notification in the prescribed form has to be sent to all Members. Lord Curzon strongly condemned the practice of some of the recent Viceroys to supersede the corporate character of their Councils by habitually consulting only a few of their trusted colleagues.

(3) Further as all orders and other proceedings of the Governor-General in Council are expressed to be made by the Governor-General in Council and signed by a Secretary to the Government of India, it is impossible to say whether they are the result of deliberation and decision in the full Council, or of consultation between the Member in charge and the Governor-General or of the Secretary acting on his own initiative.

The difficulty of knowing whether the order was the view of the Member in charge, or of the Member in Charge and the Governor-General, or of the Governor-General in Council as a whole was increased by indiscriminate use of the expressions "Governor-General in Council" and "Government of India" as equivalent in meaning. It is not possible to say from the designation "Government of India" in telegraphic or private correspondence whether and with what result the Council was consulted.

It will thus be seen that the Indian Council's Act of 1861, by giving to the Governor-General the power to make rules for the distribution of work among the Departments by allowing him to appoint the place

and time of meetings of the Council and to regulate the procedure of transacting business therein, reduced the Executive Council to a state of weakness.

Nor were individual Members of the Executive Council free from the interference of the Governor-General. It was impossible to say when and at what stage the Viceroy would interfere for, as Sir O'moore Creagh put it, it depended upon his ability, leisure, or how the spirit moved him. His interference was consequently erratic and disconcerting to those nominally in charge of Departments, for he dealt with matters small and great, local or Imperial, of which it was quite impossible he could have any sufficient knowledge.*

The scope for interference is vastly increased by the peculiar position of the Secretaries of the Departments. They are appointed by the Governor-General and have access to him, independently of the Member in Charge. We must now refer to two more causes operating *outside* the Executive Council that helped the concentration of power in the hands of the Governor-General. Consider first his relation with the Secretary of State. He is in the fullest confidence of the Ministry and in constant communication with the Secretary of State. He also receives such correspondence as is "urgent" or "secret." His knowledge, therefore, of the views and opinions of the Home Authorities, and his personal acquaintance with and influence upon them give him an authority in his Council which his colleagues can never hope even to approximate. Indeed the 'private' Correspondence between the Secretary of State and the Viceroy, both by letters and cablegrams, reached

dangerous proportions at certain times. The whole of this correspondence is removed when the persons leave their office and the public knows nothing about it. Such correspondence undermines the corporate influence of the Councils of the Secretary of State and the Governor-General, and tends to throw the whole power in the hands of these two functionaries. Sir Tej Bahadur Sapru commenting upon the specially confidential relations between the Secretary of State and the Governor-General remarks* that considering the heterogeneous composition of the Executive Council there is little room for surprise if the Governor-General should observe a special degree of caution in the disclosure of communications to his colleagues.

Nor could the Local Governments offer any effective resistance to the encroachments of the Governor-General for prior to the Reforms there was no clear-cut division of Central and Provincial subjects.

Conclusion.—There can be thus no comparison between the position which the Governor-General held with regard to his Council in the days of the Company and that which he came to occupy since the Act of 1858. To quote once again the words of Sir O'moore:—"The whole tendency of all Acts of Parliament previous to the transfer of the Government of India to the Crown was to associate the Governor-General with a Council of trained Administrators, who had that good knowledge of India in which he himself was deficient, and who, being in an independent position, would be capable of informing, guiding, and—to a reasonable extent—controlling him, but who

* The Indian Constitution p 63.

would not be in a position to thwart or obstruct him. It was never intended that the Governor-General should be a man of open mind and balanced judgment who would initiate as well as adjudge. He has now become the Agent of the Secretary of State, the independence of his Council is gone, and the Indian Empire is entrusted solely to their combined ignorance of India and is virtually handed over to a despotism."* Chailley also says "that the Executive Council of the Viceroy has become an assembly of specialists who hold office for five years. The theoretical equality with the Viceroy has, in practice, disappeared and the responsibility is becoming more and more concentrated in the hands of the Secretary of State and the Viceroy."†

(48) IS THE GOVERNOR-GENERAL'S COUNCIL A CABINET

Before proceeding to consider the process of centralization within the Provincial Government it will not be inappropriate to make a digression here upon the question—whether Governor-General's Council is a Cabinet? Both Sir John Strachey and Sir George Chesney put forward the view that the Governor-General and his Council formed "a Cabinet of administrative heads of Departments." Lord Curzon also said‡ that Canning laid the foundation of Cabinet Government in India: "each branch of the administration having its official head, who was responsible for its administration and defence". An examination of this view would clearly bring out the actual position of the Governor-General's Council.

* Indian Studies : 100. † Chailley : p. 392.

‡ Br Govt. in India Vol II. p 128

Professor H. D. Traill has defined the Cabinet as "a body consisting of (a) members of the legislature; (b) of the same political view and chosen from the political party possessing a majority in the House of Commons; (c) prosecuting a concerted policy; (d) under a common responsibility signified by collective resignation in the event of Parliamentary censure; and finally, (e) under a common subordination to one Chief Minister *viz.*, the Prime Minister."

Now we may look at the Cabinet from two points of view—the political *i. e.*, in its relation to the House of Commons, and the administrative. It is in the latter respect that considerable likeness may be discerned between the English Cabinet and the Executive Council. Both consist of Heads of Departments; both transact important business in meetings; both have Secretaries and Under-Secretaries who belong to the Permanent Civil Service. But here the resemblance stops. The contrast between the Cabinet and the Council is even more impressive when both are considered as executives related to their legislatures. Indeed, as Mr. Ramsay MacDonald points out,* the use of the word Cabinet to describe the Executive Council requires a "warning that its strict employment is in connection with Parliamentary Government, and not with a bureaucracy of Civil Servants and Crown appointees". The English Cabinet is the peculiar growth of Parliamentary Government in England. It is through the Cabinet that one or the other of the two great Parties in England which happens to have a majority in the House of Commons governs the country. Thus it is through the Cabinet that the people of the United Kingdom realise and

enjoy the fullest measure of Responsible Government. The Leader of the dominant party is called the Premier and he is the keystone of the arch of the Cabinet. He selects his colleagues from amongst his followers and directs their policy and is responsible to Parliament for the whole Cabinet. Confidence of the House of Commons is the very breath of the nostrils of the Cabinet; above all, the whole system of Government by the Cabinet is based upon conventions and understandings and not upon Acts of Parliament.

Now the Council of the Governor-General has nothing to do with Responsible Government in India. In fact the Government of India was entirely responsible to Parliament and not to the people of India. Consequently they could always depend upon the official votes in the Governor-General's Legislative Council, which were always in a majority (before the Reforms). Members of the Executive Council did not represent any political party; the majority of them were members of the Indian Civil Service and all held office for five years; though they followed a concerted policy they might not all hold the same or similar political views. They were not called upon to, and generally did not, resign if their advice was not followed by the Governor-General. The Prime Minister in England generally appoints his own colleagues. The Governor-General has often to work with those who are already there and he can only recommend names to fill up vacancies. There is a wider gulf between the Viceroy and his colleagues than there is between the Prime Minister and his colleagues. Finally, the Governor-General in Council is a body created by the Statute; its procedure is bound by Rules and Regulations and every Member

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places on record his views. In fact the practice of recording minutes on every subject that comes before the Council is regarded by many as the greatest safeguard against irresponsible and slipshod exercise of authority by that body. No records are kept of the proceedings of the Cabinet and its meetings and methods of business are altogether of a flexible type.

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A process similar to the one described in the preceding sections took place in the Provinces. All power came to reside in the provincial Head, whether he was a Governor, or a Lieutenant-Governor or a Chief Commissioner. Indeed in the last two types of Local Governments there did not exist even the nominal check of an Executive Council.

In view of the diversity of status that prevailed among the Local Governments before the Reforms it is difficult to give a generalized account of Provincial administration. But a rough picture of administration in one province may be given which is broadly true of another. The Local Government administered through its Secretariat. For the purposes of revenue-administration in every province except Bombay there existed a Board of Revenue or its equivalent, a Financial Commissioner. In Bombay the Secretariat dealt directly with the Commissioners and Collectors. The easiest way of understanding the organization of administration in a province is to think of the latter as composed of districts which, in all provinces except Madras, are combined into groups of, usually four to six districts, called Divisions, each under a Commissioner.

Divisional Commissioners.—In the earlier stages of administration they were invested with very large powers in revenue and judicial matters. The growth of Secretariats and Departments has deprived them considerably of their former importance. Their position is yet great in Bombay though it has been very much circumscribed in Burma and Central Provinces.

A Commissioner is primarily concerned with the administration of Land Revenue, and acts as a Court of Appeal in revenue matters. His functions are advisory in connection with the settlement of Land Revenue, but in connection with collection he has powers of suspension and remission. The Decentralization Commission had no doubt that the general status of the Commissioner had deteriorated and needed material strengthening. It was opposed to the abolition of Commissioners as that would lead to increased centralization. He should not be a mere inspecting officer but a real administrative head of his Division. He should be consulted and have power of control over special Departments such as Public Works, Police, Forests, Education and Excise which affect general administration and he should co-ordinate their actions. His control over the Police is much less than before but he should be promptly informed as to the state of the districts and he should bring to the notice of the District-Magistrate or the Inspector-General of Police any defects. He should tour in his Division and be in close touch with the Collectors whom he might periodically assemble for discussion of matters of common interest.

The Decentralization Commission has well pointed

out* that in the case of Commissioners "their dissociation from judicial functions; the constitution and growth of specialized departments; the development of postal and telegraph system; the tendency to codify into Acts, Rules or Standing Orders matters which would in old times have been left to the discretion of individual officers; the growing tendency to appeal to head-quarters against local decisions; and the fact that legislation has often led to the Commissioners' powers being undermined, have all, to a large extent, inevitably diminished the powers and position of the Commissioners."

Collector-Magistrate.—The principal unit of administration is the District. Each district is under a Collector who is the local representative of Government in its general dealings with the people, and is also the District Magistrate. As Collector, he is not merely responsible for the collection of most branches of revenue, but is concerned with the manifold relations existing between Government and the agricultural classes, which represent two-thirds of the total population of British India. Thus he is concerned with questions relating to the registration, alteration, relinquishment or partition of land-holdings which pay revenue direct to Government, and in the greater part of India, has to deal in these respects with an immense number of petty peasant proprietors. He is likewise, in most provinces, concerned with the adjudication of disputes between landlords and tenants, and also with the administration of estates taken under the management of the Courts of Wards. He has to keep a careful watch over the general circumstances of his district, and, in times

* Report of Decentralization Commission para 462

of famine or severe agricultural distress he is responsible for the administration of relief and other remedial measures. He also deals with grant of loans to agriculturists, and with the preparation of agricultural and other statistics; and he has a general control over the working of the Forest Department in his district, in so far as this touches on matters affecting the economic or other interests of the people.

His association with and control over the working of District and Taluka Boards was much more intimate formerly. He has to furnish information on all important occurrences in the district, and he is called upon to advise on any general schemes affecting it which may be under consideration.

As District Magistrate, he is responsible for all matters affecting the peace of the district, and exercises a general supervision over the local police officers, while he controls the working of subordinate Criminal Courts, and has himself a certain amount of original and appellate criminal work.

As Mr. Ramsay MacDonald puts it :^{*} "He is the eye of the Government and its tongue. He has to put his finger on the pulse of his District, and nothing of any importance is supposed to happen without his knowledge. A sparrow ought not to fall without the incident coming to his ears". In another picturesque phrase he says :[†] "The District Officer is indeed the tortoise which supports the elephant upon which Indian Government rests".

The causes that have operated to reduce the powers of the Commissioners have produced a similar effect upon the position of the Collectors. The multiplication of Departments *e.g.* Police, Excise,

* The Government of India. p 97

† page 98

Forests, Education, Irrigation, Public Works, has made serious encroachments upon the ample sphere of activity that he at one time enjoyed. His control over the Police has been reduced, as a result of the recommendations of the Police Commission of 1902-3. In passing orders upon this subject the Government of India observed: "Since the District Magistrate is, and must continue to be, the chief executive authority in the district, and in that capacity is responsible for the peace and good order of his charge, the police must be completely under his control and direction, and he must, subject to the usual control of the Commissioner and the Government, have unquestioned power to employ them as he thinks best for the maintenance of law and order, and the detection and suppression of crime". But the Collector does not interfere with the internal matters of organization and technical discipline that are left to the Superintendent of Police in each District who is subordinate to his Departmental Superior, the Inspector-General of Police. But in the matter of the detection and prevention of crime, and the preparation of cases etc., the Superintendent of Police works in close co-operation with the District Magistrate.

We need only refer to the Sub-divisions into which a district is divided for administrative convenience. The Sub-divisional officials (or their subordinates) are also Magistrates with powers inferior to those of the Collector-Magistrate.

Combination of Executive and Judicial Functions.—From the summary of revenue and judicial administration in the District as given above, it is apparent how the executive and judicial powers have been combined in the hands of the Collector-Magistrate

and his subordinates. This combination has been the most controversial subject of Indian administration and has a long history. The earlier part has been already traced in connection with the work of Warren Hastings, Cornwallis and Bentinck. It was Bentinck, as we saw, who again invested the Collectors with the Magisterial powers. In 1837 a Committee was appointed to inquire into the police system in Bengal, and on the recommendations of this Committee Lord Auckland proceeded, with some misgiving, to appoint separate Magistrates and Collectors in most districts.

There was now a reaction against this policy of separation, led by Lord Dalhousie. He complained how the Collectors, on account of revenue administration being reduced to a routine, had not enough work; and how, on the other hand, the Magistrates—who were young and raw officers—did not prove equal to the task of maintaining peace in the District. Proposals for uniting the two offices were, therefore, again put forward by Sir Frederick Halliday—the first Lieutenant-Governor of Bengal—and approved of by Lord Canning. After the suppression of the Mutiny, orders for the combination of functions, as recommended by Lord Canning, were issued by the then Secretary of State, Lord Stanley.

The recommendations of the Police Commission that was appointed in 1860 to reorganize the Police were in the same direction. This Commission recommended the appointment of a European Superintendent of Police for each district, responsible for the internal discipline and management of the police force to the Inspector-General of Police, but bound to obey the orders of the District Officer in all

matters relating to the prevention and detection of crime, and the preservation of the peace of the district. The Commission recommended the general separation of police and judicial functions, the only exception being in the case of the District Officer. Act V of 1861 embodying these recommendations was passed for Bengal and similar Acts were passed for the other provinces. The whole controversy of combination and separation of functions was once again raised in 1872, when the Code of Criminal Procedure was being amended, but thanks to the views of the then Law Member Sir James Stephen, the combination was retained.

Thus the Collector-Magistrate continued to remain the most important official in the District, a symbol of the power of the Provincial Government.

The subsequent history of the controversy will be resumed in § 55.

(50) BUREAUCRATIC GOVERNMENT

We considered in the last Chapter how the Government of India came to be subordinate to the Secretary of State for India and how the Government of India, in their turn, excessively interfered with the Provincial Governments. In the last section we saw how the Collector-Magistrate was set up in each District for the discharge of multifarious duties on behalf of the Provincial Government. It would be worth our while to review the growth of this centralized and bureaucratic system, to study some of its tendencies, to expose its inherent defects, and to visualize its proper place in the progress of a people.

It was natural that when the country began to pass under British Rule, the new-comers should attempt to

make their system of Government as much like the old system as possible. Now a prominent feature of Mogul Administration was the delegation of large powers to the local Subha in the exercise of which he was not much hampered by the Central Authority on account of his distance from the capital and also on account of the difficulties of communication. But though the Subha combined in himself Revenue, Judicial, and Magisterial functions he left the Village Communities and the local Zamindars in the undisturbed enjoyment of their customary powers.

The first step towards centralization of authority under British Rule was taken when the "Collector," armed with powers as extensive as those of his Mogul prototype, was appointed in each District. But, unlike the Mogul Officer, the Collector directly managed Revenue and Judicial functions—and the Village Communities and Panchayats being deprived of their *raison de tre* soon fell into desuetude.

The Collector continued to exercise plenary powers for many years. He moved among the people, personally heard their complaints, and dealt out justice on the spot. He had few occasions to refer to his superiors: and the absence of roads left him unfettered in the exercise of his powers. Those were the golden days of the Civil Service. But soon a change came over his position. Railways, Post and Telegraphs vastly improved communication. Parties aggrieved by the action of the District Officer or his subordinates could now make use of their wide powers of appeal. At the same time a host of Inspecting Officers began to tour the country. The District Officer thus found himself deprived of a large part of his former freedom, and more and more bound down by Rules and Directions

which the Local Government began to issue on the recommendation of its Inspecting Officers. At the same time functions which were formerly discharged by the Collector *e.g.*, irrigation, public works, agricultural improvements, forests, police etc., came to be taken out of his hands and entrusted to separate Departments. Thus between constant inspection on the one hand and departmentalization on the other the District Officer was losing that extensive power which he originally possessed, and being increasingly absorbed in mere desk work, had fewer opportunities of coming in contact with the people. All power came to be centered in the hands of the Secretariat at the Provincial Head-quarters. "The real power, the sceptre of authority, lies with the Secretariats, and the Heads of Departments under whose standing or special orders the District Officers move and act like marionettes, dancing to strings pulled by an unseen hand. And now the metamorphosis is complete. The Government is a bureaucracy. Impersonal has superseded personal absolutism—the absolutism of a machine, that of the man."* Mr. Ramsay MacDonald traced one of the causes of political discontent in India to the growth of bureaucratic centralization. "When communication was difficult and Indian conditions resisted centralization, the individual had freer play. He was a human being in touch with human beings, but, though that may still be retained, too many officers become wheels in a mechanism working by rule and regulation. The machine reduces its parts to mechanisms. The tendency has been to centralize the working, and that was the fundamental part of Lord Curzon's rule. The

machine of Government has become a thing apart, and by separating itself from the organic life of India it has over-emphasized the fact that India is ruled by foreigners."

In fact the growth of Secretariats at the cost of the other limbs of Government is a feature of all bureaucracies. They thrive upon correspondence. That they had succeeded in sucking the District Officers dry of all real power was well pointed out by the late Mr. Gokhale.

He deduced the following defects from the weakening of the Collector's position; (a) owing to excessive Secretariat control the Collector was unable to grant redress on the spot; (b) owing to multiplication of Departments harassing departmental delays became inevitable in the disposal of matters which properly speaking ought to be disposed of on the spot under the authority of the Collector; (c) owing to the spread of English education in the country and other causes, there was not that mastery of Indian languages attempted by Collector which he used to acquire formerly; (d) the writing work of the Collector increased enormously; he was tied largely to his desk, and therefore unable to acquire that acquaintance with the requirements of the people which his predecessors were able to acquire; (e) his back was stiffened by the growth of the political agitation in the country, and he was, so to say, driven more within himself.

While this change in the position and powers of the Collector was going on in India, another change was silently proceeding with respect to the classes of society from which candidates for the Civil Service came to be recruited in England. In the days of the Company under the system of 'patronage'

members of a limited number of families that had a traditional connection with India came out to serve the Company. But when the Indian Civil Service was thrown open to competition in 1853, a subtle change was perceptible. Not family connections or aristocratic traditions but mere intellectual qualities became the sole test for entrance into the Civil Service. Now the system of recruiting officials on a competitive basis has many undoubted advantages and has been adopted in most Western countries. But it has its defects which are likely to be more prominent in a country like India where the ideas of the people about 'Government' are still old-fashioned. Here qualities of heart—rather than those of head—make a 'successful' administrator, and they are the very qualities which no competitive examination can test. Some critics of Indian administration have found in this difference between the old and the new type of the I. C. S. one explanation of the rise of discontent in India.

The Provincial and the Central Secretariats were almost wholly recruited from the Members of the Civil Service after they had had a few years' experience of direct administration in the districts. Indeed a constant flux and reflux between the two classes of officers was always maintained. A similar interchange of officers took place between the Government of India and the Provincial Governments. All were held together by the tie of the Indian Civil Service. "The Indian Civil Service is more than a collection of individuals. It is a bureaucracy with a corporate life, a machine, a free masonry. It moulds the raw recruit into its own image. It has to work as

a whole."* And now it is easy to realise the full significance of the oft-repeated complaint that the whole Government of India was ridden by the Members of the "Heaven-born" Service, that, in fact, *they* were the Government of India. Interesting sidelight is thrown upon the power and position which they had built for themselves. The young Civilians, as soon as they landed in India found themselves the members of a sacrosanct body. Their natural inclination to remain aloof from the people was not now corrected by the former salubrious practice of moving among the people, but was rather strengthened by the desk-work to which they were condemned, and by the evidence of skill in which they were promoted. Easy communications, the amenities of 'Dak Bungalows' when on tour, and their frequent transfers to and from the Secretariats to "life in the plains" completed the process of alienation. The practice of the annual migration or exodus to the Hills contributed as nothing else did to this estrangement. From their "Olympian heights" the Official community could afford to look down upon the vast mass of the people on the plains. They ceased to have a living touch with the new aspirations and ideals that were steadily growing among the people as a result of the spread of education.

But in addition to the alienation of the sympathies of the people, the great evil of a bureaucracy is its dwarfing influence upon the personal and national ideals of the people. "Nations advance, a people becomes great not through docility and submissiveness, but by the free play of aspiration and thought, the liberty to advance along all lines of

* I Ramsay MacDonald page 101

legitimate progress in self-respecting independence of spirit. That is the very antithesis of the bureaucratic ideal. Efficiency of the machine, not the living organic growth of a people; progress, if such there be, on the initiative of the Government, not progress on the initiative of the people; such are its watchwords.*

In fact, it is necessary to carefully bear in mind the true role of a Bureaucratic Government in the political progress of a people. "It finds its true function in the provision of a kind of training school to bridge over the gap between autocracy on the one hand, and some popular Government on the other, to form a nexus, as it were, between the barbaric pomp of the mediæval monarch and the sober institutions that characterise democracy. For the arbitrary rule of one it substitutes ordered rule and precedent. In place of the perplexities and fierce uncertainties that dog the steps of even the most brilliant autocrat, it enables men to forecast with safety the future and to earn their living in confidence and quietude. It provides the smooth and well-oiled machinery essential for those social inquiries and ameliorations which the modern conscience so insistently demands. In a word, it is the portal to modern democracy." †

That the Anglo-Indian Bureaucracy, in spite of the many hard things said against it, admirably succeeded in giving to the country a perfect administrative machine must be admitted. But too much emphasis was laid upon the promotion of mechanical efficiency, and little upon the participation of Indians in the machinery of government. This great danger

* Houghton : 58.

† Houghton 169-69

of the bureaucratic form of government was realized by Lord Minto, as it was realized before him by Lord Ripon. Both tried their best to mitigate that danger, but with little success. Bureaucracy was stronger in the days of Minto than it was in the days of Ripon. Yet when everything has been said against the Bureaucracy we must maintain that the Bureaucracy laid those foundations upon which the structure of Responsible Government is now to be raised, and in the raising of that structure also the Bureaucracy will undoubtedly play an important part.

SECTION TWO

DECENTRALIZATION AND ASSOCIATION

CHAPTER XI

DECENTRALIZATION

(51) DEFECTS AND LIMITATIONS OF A CENTRALIZED BUREAUCRACY

We saw in the preceding pages how after the British possessions in India had been consolidated, a rigid bureaucratic form of administration *i. e.*, "an administration by officials, conducted with the aid of official light, and under merely official control"* came to be established. Efficiency was the watchword of Administration. Even here, however, too much centralization leads to exorbitant correspondence and unpardonable delay in the despatch of public business. It has even more radical defects, all resulting from the exclusion of people's voice from the management of their affairs. They are these :

- (a) The decadence of the indigenous institution of self-government—the Village Panchayat.
- (b) Grouping of Provinces without regard to racial or linguistic affinities.
- (c) Enormous growth in public taxation and expenditure; particularly the growth of military expenditure.

- (d) Backwardness of what are called nation-building activities of the State *e. g.*, Education, Sanitation, Temperance, Co-operation, etc.
- (e) Industrial backwardness; agricultural stagnation; Extreme poverty leading to and aggravating the effects of famines and epidemics.
- (f) Attempts to thwart political agitation by restrictions upon freedom of press, speech, and movement; increase in sedition and anarchist crime; repressive measures.

Gokhale's verdict.—The inevitable failure of a Bureaucracy to attain *real* efficiency was thus pointed out by the late Mr. Gokhale:—

“The efficiency attained by a foreign bureaucracy uncontrolled by public opinion, whose members again reside only temporarily in the land in which they exercise official power, is bound to be of a strictly limited character, and it can never compare with that higher and true efficiency which is possible only under a well-regulated system of self-government. The present form of administration in India is a strongly centralized bureaucracy in which the men at the centre hold office for five years only. They then leave the country, carrying away with them all the knowledge and experience of administrative matters acquired at the expense of the country, and their places are taken by new men, who, in their turn retire similarly after five years. As things are, there is no one ever in the Government who is permanently interested in the country as only its own people can be interested. One result is that the true well-being of the people is systematically subordinated to militarism and

service interests of English mercantile classes; and though under such a system peace and order may be maintained, and even a certain amount of efficient administration secured, the type of efficiency is bound to remain a low one always. Moreover, it is clear that even such efficiency of administration as has been attained in the past by the existing system, is bound to suffer more and more, owing to the growing antagonism of the governed to that system. No man for instance, ever laboured more strenuously for mere efficiency than Lord Curzon, and yet, never was discontent deeper and more wide-spread than when he left India, and no Viceroy of recent times has had to succeed to a greater legacy of difficulties than Lord Minto." *

(52) DECENTRALIZATION

It would seem then that the advent of Lord Minto and Lord Morley into the orbit of Indian Administration marked the dawn of a new era. Many events conspired to give point to the transition. Lord Curzon's failure meant the failure of the Bureaucratic form of Government. The Liberal party came into power about the same time with Morley as the Secretary of State and India had a sympathetic Viceroy in Lord Minto. In his speech in the House of Lords Morley said †: There are two rival schools of thought, one of which believes that better government of India depends on efficiency, and that efficiency is in fact the end of British rule in India. The other school, while not neglecting efficiency, looks also to what is called political concessions." As a preliminary to

* (Gokhale : 989.

† Keith - *Speeches and Documents* Vol II. p. 88

the grant of some concessions, Morley and Minto appointed a Royal Commission to enquire into the causes of and suggest remedies for Centralization.

Limited Scope of the Decentralization Commission.—The Royal Commission had very limited terms of reference. It was expressly debarred from enquiring into the relations between the Secretary of State and the Government of India and thus the main and sole cause of centralization remained untouched by them. Further, the Commission was not to go into questions of a purely political nature, questions of general policy, and questions such as the separation of judicial and executive functions. The Commission was simply to report whether the existing relations between the Central and Provincial Governments could be simplified and improved by measures of decentralization and "the system of government better adapted both to meet the requirements and promote the welfare of the different provinces, and without impairing its strength and unity to bring the executive power into closer touch with local conditions."

It will be seen that the underlying principle of the Decentralization Commission was *administrative* and not *constitutional*. It wanted to simplify administration and not to give autonomy to the Provinces.

The Commission urged * the following *considerations for decentralization* :

(1) The difficulties of administering a vast sub-continent from a single head-quarters, and the inevitable failure in statesmanship and efficiency which must result from a Central Government attempting this task.

* Report : para 48.

(2) The fact that the various Provinces contain diverse nationalities with different languages, traditions and interests, and are often on separate planes of development.

(3) The desirability of creating a larger sense of responsibility in *Provincial and local authorities*. (Mark, not in the *people*.)

(4) The importance of strengthening the administration and educating the people by interesting the latter more largely in public affairs.

(53) FINANCIAL DECENTRALIZATION

It was in the sphere of Finance that the Commission suggested many reforming measures which were adopted later on by the Government of Lord Hardinge. To appreciate these measures let us first of all trace the *history of Provincial Settlements*.

Sir John Strachey, to illustrate the utter dependence of the Provinces upon the Central Government for funds, wrote: "If it became necessary to spend £20 on a road between two markets, to rebuild a stable that tumbled down, or to entertain a menial servant on wages of 10 shillings a month, the matter had to be formally reported for the orders of the Government of India."*

This continued right up to the year 1871. The provinces having no independent resources of their own and expecting to get whatever they wanted from the Government of India, had no motives for economy in expenditure or care in the collection of revenue and there was an amount of friction between them and the Central Government over trifling details. The first step in Decentralization was taken by the Government

* Strachey : 113.

of Lord Mayo. Certain heads of expenditure *e. g.*, Jails, Registration, Police, Education, Medical Services, Printing, Roads, etc., were transferred to the control of the local Governments with the revenue under the corresponding heads, to be supplemented by a *fixed annual* Imperial grant. By this measure a certain decree of fixity in Imperial finance was secured and the local Governments were given absolute freedom for allotting the Imperial grant as they liked.

But this arrangement did not offer an effective inducement to the Provinces to develop the revenues collected in their territories and to secure economy. Lord Lytton's Government, therefore, chiefly as the result of the recommendations of Sir John Strachey, made the following improvements in 1877-78:—

(1) Certain additional heads of expenditure *e. g.*, Land Revenue, Excise, Stamps, General Administration, Stationery and Printing, Law and Justice, were transferred to the Provincial Governments.

(2) For the administration of these additional services, instead of making an increase in their permanent grants, a share in the revenues realized under certain heads was assigned to them *e. g.*, Excise, Stamps etc.

Thus for the first time was introduced into Indian finance the classification of revenue heads into "Indian," "Provincial" and "Divided." It generally happened, however, that the assigned revenues of the provinces fell far short of their required expenditure, and the deficit had to be made good as before, by a *fixed lump annual* grant.

This led to annual bargaining between the Central and Provincial authorities— and as the fixed grant

formed a considerable portion of the resources of the provinces, the resources could not increase with sufficient elasticity. In the days of Lord Ripon, therefore, his Finance Minister Major Baring (afterwards Lord Cromer) (a) instead of making settlements annually, kept them in force for five years; (b) instead of making up the provincial deficit by an Imperial grant, a certain percentage of Land Revenue was made over to the Provinces. Thus the annual bickerings were stopped and provincial revenues made more elastic. Settlements on these lines were made in 1882, 1887, 1892 and 1897. Though the Provinces were now better off than they were thirty years previously, their position was most unsatisfactory. "In 1900-1901, out of a total gross revenue of £75 millions, the provincial Governments were entrusted with the expenditure of £18 millions. From this income they had to provide for the greater part of the expenditure incurred in the various Departments of the Civil Administration entrusted to them, for the collection of land revenue, for the Courts of Justice, Jails, Police, Education, Medical Services, civil buildings and roads, and for a multitude of other charges."⁴

It was the practice of the Government of India to resume, at each time of the revision of the settlement, whatever surplus revenue accrued to a province during the period. This killed any motive for economy, as the Provincial Governments knew that if they economized in one direction to accumulate money for other needs their savings were imperilled, while their reduced standard of expenditure would certainly be taken as the basis for the next settlement.

The Government of Lord Curzon, therefore, made the settlements *quasi-permanent* in 1904. As at that time the Central Government was having a series of surpluses, it diverted a part of this surplus, in the shape of special grants, to the Provincial Governments for the improvement of Police, Agriculture, Education, Local Self-Government, etc.

The final step in the history of these settlements was taken in 1912 when Lord Hardinge's Government declared the settlements to be permanent. At the same time certain improvements were made in these settlements. (a) Though the burden of famine relief was thrown entirely upon the provinces the Government of India showed willingness to consider the grant of assistance to a province in the event of grave embarrassment. (b) Fixed grants assigned to the provinces to make up their deficits were, wherever possible, replaced by growing revenues. (c) Special grants of a non-recurring character were to be continued as before, but care was to be taken to see that they did not unduly interfere with the Local Governments and that they were given with due regard to the wishes of the Provincial Authorities. (d) Minor adjustments were made to ensure that each province got its proper share of revenue. Thus Forest revenue and expenditure were made wholly provincial in all provinces, Excise was wholly provincialized for Bombay, and to the extent of three quarters in the Central Provinces and the United Provinces. Land revenue was made half provincial in the Punjab and $\frac{2}{3}$ provincial in Burma.

Though by this arrangement the Provinces got larger revenues and greater freedom in their application certain restrictions upon them were still continued.

Thus they could not budget for a deficit, and they had to maintain a minimum cash-balance with the Government of India. Nor had they powers of taxation or borrowing.

(54) ADMINISTRATIVE DECENTRALIZATION

Very little was done by way of removing the restrictions upon the legislative powers of the provincial councils and it may be said that the provinces continued to be the agents of the Central Government with slightly increased powers in financial matters.

Some measure of decentralization was brought about *within* the province by (a) reform in administration and (b) the institution of Local Self-Government. We may mention the following recommendations of the Decentralization Commission as following under the former head:—(1) Thus the Commission was in favour of appointing Governors in place of Lieutenant-Governors and Chief Commissioners and giving them Executive Councils. It pointed out the *administrative* advantages of this reform: it affords (a) provision for suitable distribution of work, and relief to the head of the Province. (b) Greater continuity of policy, collective consideration of important questions, increased public confidence, and consequently less necessity for outside official control. (c) The introduction of a fresh mind, possessed by a Governor whose position and antecedents would command the deference and support of his colleagues. (d) Greater efficiency of the Provincial Governments in relation to their Legislative Councils.

Among other measures recommended by the Commission of a purely administrative nature we may mention the following :

(2) Proper definition of the powers and functions of Inspector-Generals attached to many Departments of the Government of India *e. g.*, The Director General, Indian Medical Service; Sanitary Commissioner with the Government of India; Director General of Education; Inspector-Generals of Forest, Agriculture, Irrigation, Excise and Salt etc. Though these Imperial Officers were regarded as useful in their own way as supplying information to the Government of India, and some of them as carrying on research, they were not to interfere with provincial administration.

(3) The Commission recommended the abolition of the Boards of Revenue where they existed and transferring their work to members of Executive Councils and to Divisional Commissioners.

(4) It was in favour of retaining the Divisional Commissioners as a measure of decentralization.

(5) Within the District, it recommended the development of the sub-divisional system as it obtains in the Madras Presidency. The sub-division consists of a group of Taluks or Tahsils. The Tahsildar should be under the Sub-divisional Officer and the latter should be under the Collector and both should be made to feel as fully responsible for the good administration of their charges as the Collector is for that of the whole district. For this purpose their powers should be enlarged. The Commission described the Tahsildar (corresponding to the Mamlatdar in the Bombay Presidency) as "the non-commissioned officer of the administration. He is the person in closest contact with the people, and to him the Collector and the Sub-divisional Officer on the one hand, and the ryots on the other, look most for information. He is not responsible merely for revenue and criminal work

but has to take a large share in other matters as well." The Commission was* "emphatically of opinion that the sub-divisional system ought to be universally applied, as bringing the executive officers of Government into more immediate local contact with the people, and as the most obvious instrument of efficient decentralization."

(55) SEPARATION OF EXECUTIVE AND JUDICIAL FUNCTIONS

A measure of administrative decentralization which the Royal Commission on that subject was debarred from considering but which has always stood in the forefront of controversial politics in India is the separation of judicial functions from the executive officers in a district. We have already seen that the Collector and his subordinates also exercise magisterial powers (of the first, second or third class as the case may be) and are responsible for the maintenance of peace and order in the district, and for that purpose control the police. For purposes of internal discipline and equipment the police is under the control of its departmental head, the Inspector-General of Police, but it is employed by the Collector for the prevention and detection of crime in the district. The Collector-Magistrate is thus "a strange union of constable and magistrate, public prosecutor and criminal judge, revenue collector and appeal court in revenue cases."

The history of this union of functions has been already traced up to the year 1870 in section (28) of this book. We there found how the combination was continued, chiefly owing to the reactionary view of

* Report : para 582.

the then Law Member, Sir James Stephen. He declared that "the maintenance of the position of the district officers is essential to the maintenance of the British Rule in India and that any diminution in their influence and authority over the natives would be dearly purchased even by an improvement in the administration of justice."

Such a strong statement of the case was bound to give a fresh impetus to the agitation against combination of functions. It was led by two Bengalis, Manmohan Ghose and Romesh Chundra Dutt, and an influential memorial was submitted to the Secretary of State in 1899. It led to no immediate results. But when, with the advent of Lord Morley and Lord Minto to the helm of India affairs, there was a favourable reaction and the rigour of bureaucracy was slightly relaxed the question of separation was mooted in the Indian Legislative Council in 1908, and the then Home Member, Sir Harvey Adamson, made an official pronouncement on the subject.

The main objections urged against separation were two:

- (1) That the separation of the executive and judicial functions will involve considerable additional expenditure.
- (2) That the District Magistrate can not be deprived of his judicial powers without loss of prestige and influence over the people.

The financial difficulty can not be ignored though it is not insuperable. To the second objection Sir Harvey Adamson made the following reply which, on account of its weight and philosophic insight, bears quotation *in extenso*

“Those who are opposed to a separation of functions are greatly influenced by the belief that the change would materially weaken the power and position of the District Magistrate and would thus impair the authority of the Government of which he is the chief local representative. The objection that stands out in stronger relief is that prestige will be lowered and authority weakened if the officer who has control of the police and who is responsible for the peace of the district is deprived of control over the Magistracy who try police cases. Let me examine this objection with reference to the varying stage of the progress of a community. Under certain circumstances it is undoubtedly necessary that the executive authorities should themselves be the judicial authorities. The most extreme case is the imposition of martial law in a country that is in open rebellion. Proceeding up the scale we come to conditions which I may illustrate by the experience of Upper Burma for some years after the annexations. Order had not yet been completely restored and violent crime was prevalent. Military law had gone and its place had been taken by Civil law of an elementary kind. District Magistrates had large powers extending to life and death. The High Court was presided over by the Commissioner, an executive officer. The Criminal law relaxed, and evidence was admitted which under the strict rules of interpretation of a more advanced system would be excluded. All this was rendered absolutely necessary by the condition of the country. Order would never have been restored if the niceties of law as expounded by lawyers had been listened to, or if the police had not gone hand in hand with the judiciary Proceeding

further up the scale we come to the stage of a simple people, generally peaceful, but having in their character elements capable of reproducing disorder, who have been accustomed to see all the functions of Government united in one head, and who neither know nor desire any other form of administration. The law has become intricate and advanced, and it is applied by the Court with all the strictness that is necessary in order to guard the liberties of the people. Examples would be easy to find in India of the present day. So far I have covered the stages in which a combination of magisterial and police duties is either necessary or is at least not inexpedient. In these stages the prestige and authority of the Executive are strengthened by a combination of functions. I now come to the case of a people among whom very different ideas prevail. The educated have become imbued with Western ideals. Legal knowledge has vastly increased. The lawyers are of the people, and they have derived their inspiration from Western Law. Anything short of the most impartial judicial administration is contrary to the principles which they have learnt. I must say that I have much sympathy with Indian lawyers who devote their energies to making the administration of Indian law as good theoretically and practically as the administration of English law. Well, what happens when a province has reached this stage and still retains a combination of magisterial and police functions? The inevitable result is that the people are inspired with a distrust of the impartiality of the judiciary. You need not tell me that the feeling is confined to a few educated men and lawyers and is not shared by the common people. I grant that if the

people of such a province were asked one by one whether they objected to a combination of functions, ninety per cent. of them would be surprised at the question and would add that they had nothing to complain of. But so soon as one of these people comes into contact with the law his opinions are merged in his lawyer's. If his case be other than purely private and ordinary, if for instance he fears that the police have a spite against him or that the District Magistrate as a guardian of the peace of the district has an interest adverse to him, he is immediately imbued by his surroundings with the idea that he can not expect perfect and impartial justice from the Magistrate. It thus follows that in such a province the combination of functions must inspire a distrust of the magistracy in all who have business with the Courts. Can it be said that under such circumstances the combination tends to enhancement of the prestige and authority of the Executive? Can any Government be strong whose administration is not entirely above suspicion? The answer must be in the negative. The combination of functions in such a condition of society is a direct weakening of the prestige of the Executive."

Apart from the question of prestige there are certain fundamental objections to the combination of functions in the same functionary. First, as Mr. Ramsay MacDonald points out,* the judicial and executive mind are at enmity. "The executive officer makes up his mind about a man not on proof alone, but on what seems to him to be likelihood or possibility. His business is not to adjudicate upon what has been done or what has happened, but upon what

*The Government of India p 198-199

is likely, in his opinion, to be done or to happen. The Judge knows but little of likelihood. He has to make up his mind about evidence and he has to interpret and apply the law. He has to approach a case with a mind free from all impressions regarding it which must be stamped deeply on the mind of the executive officer. His outlook and function make him regard society as static; the outlook and function of the executive officer make him regard society as dynamic. Thus, apart from any taint of corrupt dealing or of any desire on the part of the executive to rule tyrannically or to use the judiciary as its tool, ... the executive and judicial mind are at enmity."

Again it is no argument to say that the Collector has rarely time to try cases himself, and he merely supervises the subordinate magistrates. The existence of the powers gives rise to suspicion and thus saps the foundations of justice. As Sir Harvey said: "The inevitable result of the present system is that criminal trials affecting the general peace of the district are not always conducted in the atmosphere of cool impartiality which should pervade a court of justice. Nor does this completely define the evil, which lies not so much in what is done, as in what may be suspected to be done, for it is not enough that the administration of justice should be pure; it can never be the bedrock of our rule unless it is also above suspicion."

One minor argument in favour of the union of functions is that thereby the members of the Civil Service get a thorough training in administration, and after a period of probation, each selects the judicial or the executive line according to the bend of his mind, and that if a separation of functions was

effected from the first and rigidly maintained, it would be difficult to get Europeans of the proper legal qualifications to fill the posts of Judges; and the quota of High Court Judges recruited from the Civil Service would to that extent suffer in quality. This argument had some force when there was difficulty in getting Indians to fill the judicial posts. But it is not so now. And there are positive disadvantages in making the members of the Civil Service shift from the judicial to the executive side and *vice versa*. The District Judge—trained in the executive field during his earlier years and often found unsatisfactory for that kind of work—does not possess those legal attainments or that judicial frame of mind and detachment of view which are essential for an impartial administration of justice. The fact is India has outlived those conditions when a combination of functions was necessary. This was so when there was no efficient Bar in India, no critical opinion, and when there was one man in the midst of a great district which he had to govern of his own will. In each respect things have changed now and the combination of function is a mischievous anomaly.

Under the Reformed Constitution the interest of this controversy has shifted from the Central to the Provincial Legislatures and measures in the direction of separation are being adopted as funds permit.

(56) LOCAL SELF-GOVERNMENT

Important recommendations were made by the Decentralization Commission for the encouragement of Local Self-Government. Here the process is not that of mere transfer of authority from higher to lower officials but that of handing over the

management of local affairs to local bodies. This involves the association of the people in the administration of local affairs. Local Self-Government thus combines both the principles of decentralization and association.

We shall first briefly trace the *Development of Local Self-Government*.

Presidency Towns.—The development of local self-government in its present form commenced in the three Presidency towns which were the earliest to come under British Rule. A Corporation was established in Madras as early as 1687 by a Royal Charter on the model of similar institutions then existing in England, and similar Corporations were later on established in Bombay and Calcutta. The Charter Act of 1793 empowered the Governor-General to appoint Justices of the Peace for the Presidency Towns who were authorized to levy taxes on houses and lands to meet the cost of scavenging, police, and maintenance of roads. It should be noted, however, that the Justices of the Peace were British servants of the Company or other British inhabitants, and not Indians.

Mofussil Municipalities.—Outside the Presidency towns there was no Local Self-Government in the towns till 1850 when an Act was passed for the whole of India enabling Towns Committees to levy indirect taxes. A few municipalities were established in the N.-W. Province and in Bombay. Meanwhile the growth of towns and the insanitary conditions prevailing in them attracted the notice of the Royal Army Sanitary Commission of 1863 and as a result Towns Improvement Acts were passed in different provinces by which Commissioners were appointed to discharge municipal functions in several towns.

Meanwhile self-government was begun in the rural areas by an Act of 1865 which authorized the imposition of a cess on land and a tax on houses for local purposes.

Lord Mayo's Resolution.—The progress made was negligible and the first considerable step was taken by Lord Mayo's Government in connection with their scheme of financial settlements with the provinces. Municipal activities were extended and the elective principle was introduced. At the same time many municipalities were relieved partly or wholly of their expenditure on police. The value of local self-government was thus pointed out in the Resolution issued on the subject: "Local interest, supervision, and care are necessary to success in the management of funds devoted to education, medical charity, and local public works. The operation of this Resolution in its full meaning and integrity will afford opportunities for the development of Self-Government, for strengthening Municipal institutions, and for the association of Natives and Europeans to a greater extent than heretofore in the administration of affairs."

Advance under Lord Ripon.—It was in Lord Ripon's time that the decisive step was taken in respect of Local Self-Government by placing it on its true basis, "not merely as a means of devolution of authority in administration and in decentralization of financial resources, but as a means of popular and political education by which alone progressive communities could cope with the increasing problems of Government."*

As Lord Ripon explained, in advocating the extension of Local Self-Government and the adoption

* Iyengar: 118.

of that principle in the management of many branches of local affairs, he did not suppose that the work would be in the first instance better done than if it remained in the sole hands of Government District Officers. It was not primarily with a view to improved efficiency in administration that the principle of Local Self-Government was put forward and supported. It was chiefly desirable as an instrument of political and popular education. Lord Ripon himself had no doubt that in course of time, as local knowledge and local interest were brought to bear more freely upon local administration, improved administration would in fact follow. Every year the task of administration became more onerous and His Excellency-in-Council argued that it was a sheer waste of power not to utilize the growing class of intelligent public-spirited men in the land. He attributed the failure of local institutions in the past to their being "over-ridden and practically crushed by direct, though well-meant, official interference."

(1) Regarding the mode in which Local Boards were to be generally constituted, the Resolution laid down the principle "that while maintaining and extending, as far as practicable, the plan of municipal government in the cities and towns of each province, the Local Governments will also maintain and extend throughout the country, in every District where intelligent non-official agency can be found, a net-work of Local Boards, to be charged with definite duties and entrusted with definite funds." The area of jurisdiction allotted to each Board was in no case to be too large. It was to be such as would ensure local knowledge and local interest, and as such the Taluka was recommended as a suitable unit. The Taluka

Boards, may, in their turn be combined under a District Board.

(2) In the composition of Boards—both rural and urban—"preponderance of non-official members" was advocated. The principle of election was to be followed wherever practicable, to be supplemented by a system of choice *i.e.*, nomination. The Chairmen of the Boards were to be, as far as possible, non-officials elected by the Boards.

(3) Regarding the control to be exercised over the Local Bodies, the Resolution laid down the principle "that the control should be exercised from without rather than from within." The Government should revise the acts of Local Bodies but not dictate them. The Government should have two powers of control. In the first place, their sanction should be required in order to give validity to certain acts, such as the raising of loans, the imposition of taxes, alienation of municipal property etc. In the second place, Government should have power to interfere either to set aside altogether the proceedings of the Board in particular cases, or, in the event of gross and continued neglect of any important duty, to temporarily suspend the Board.

(4) The primary functions of the Municipal Boards were the following:—

(a) The construction, upkeep and lighting of streets and roads, and the provision and maintenance of public and municipal buildings; (b) public health, including medical relief, vaccination, sanitation, drainage and water-supply, and measures against epidemics; (c) education, especially primary education.

The services entrusted to Rural Boards were similar to those made over to municipalities, the

principal being communications, education and sanitation, and occasionally, famine relief.

(5) The principal sources of revenue of municipalities came to be—(a) Octroi, principally in Northern India, Bombay and the Central Provinces; (b) taxes on houses and lands in Madras, Bombay, Bengal, Burma and the Central Provinces; (c) a tax on professions and trades in Madras and the United Provinces; (d) road tolls in Madras, Bombay and Assam; (e) taxes on carts and vehicles and (f) rates and fees for services rendered in the shape of conservancy, water supply, markets and schools, in all.

The main income of rural boards was derived from a cess on land, which was collected by Government agency along with the land revenue, the proceeds being subsequently adjusted to the credit of the Local Boards. In some provinces a portion of the cess was utilized for provincial purposes.

Decentralization Commission on Local Self-Government.—The recommendations of this Commission were responsible for a further development of Local Self-Government. In regard to municipalities it was recommended that they should ordinarily contain a substantial elective majority and should usually elect their own Chairmen, that they should have full powers in regard to taxation within the limits of the laws, and that they should have complete control over their budgets subject to the maintenance of prescribed minimum balances. Similar financial privileges were extended to the Rural Boards.

The Commission strongly recommended the establishment of village panchayats. Reference has been made to the autonomous character of village communities in India Though they had survived

every political revolution in the past, they declined under the pressure of British administration. As the Commission explained,* the village lost part of its autonomy and some of its characteristic features owing to "the establishment of local Civil and Criminal Courts, the present revenue and police organization, the increase of communications, the growth of individualism and the operation of the ryotwari system which is extending even in the north of India." Though the village continues to be the unit of administration for revenue purposes, and in many provinces it maintains its own police, it has ceased to be a unit of administration for purposes of Local Self-Government. The Commission strongly urged the desirability of reviving the Village Panchayats in the following terms:†

"We are of opinion that the foundation of any stable edifice which shall associate the people with administration must be the village, as being an area of greater antiquity than administrative creations such as the tahsils, and one in which the people are known to one another and have interests which converge on definite and well-recognised objects, like water-supply and drainage. It is probable indeed that the scant effort hitherto made to introduce the system of rural Self-Government is largely due to the fact that we have not built up from the bottom."

Review of Local Self-Government upto 1915.—Having reviewed the main recommendations of the Commission let us examine the position of Local Self-Government about this time. In this respect the Presidency Towns stand in a class by itself. *Bombay* has always served as the model for the other Presidency Towns.

* Report. para 696

† Report: para 699.

Its first Corporation consisted of a Municipal Commissioner (a Government Official) and nominated Justices of the Peace who were entirely under his influence. It was in 1872 that for the first time, and as a result of the suggestions of Mr. (afterwards Sir) P. M. Mehta, the Corporation came to consist of members half of whom were elected by the rate-payers, the other half being made up of J. P.'s and nominees of Government. The Act of 1888 increased the number of elected members to 72 of whom only 16 were nominated by Government, the rest being elected by rate-payers, the J. P.'s, the University and the Chambers of Commerce. The Corporation had a Standing Committee of 12—eight elected and four nominated—with an elected President under whose directions the work of administration was carried on by the Municipal Commissioner who was a nominated official belonging to senior rank in the Indian Civil Service.

The *Calcutta* Corporation was remodelled on the Bombay pattern in 1876 when it came to consist of 48 elected and 24 nominated Commissioners. But the nominated President possessed preponderating power. Lord Curzon reduced the number of Commissioners to fifty of whom 15 were nominated by Government, the rest being elected by the rate-payers, the Chambers of Commerce and the Port Trust. This Corporation also had a Standing Committee of its own but it was not at all quite as powerful as that of Bombay.

The principle of election by rate-payers was introduced in the *Madras* Corporation by an Act of 1878. An Act of 1904 increased the number of Corporators to 36 and created a Standing Committee with a President.

In addition to these Corporations the Presidency Towns had two other Bodies for specific purposes, the Improvement Trusts—for the purpose of reclamation of land, road widening, improvement of tenements of the labouring classes, etc., and the Port Trusts for the improvement of the Ports. In 1911 the aggregate income of the Municipalities of Bombay, Calcutta, Madras and Rangoon was $2\frac{1}{2}$ crores. The incidence of taxation per head was highest in Rangoon, 11·61 Rupees, 10 Rupees in Bombay, $8\frac{1}{2}$ Rupees in Calcutta and 3 Rupees in Madras.

Municipal and Rural Boards.—Turning to Municipal and Rural Boards, we find that there were in 1911, 713 Municipalities, 197 District Boards and 517 Sub-district Boards. The population in municipal areas was about 16 millions *i.e.* about 7 per cent. the remaining 93 per cent. being entirely rural. The taxation per head in Municipal areas was about two rupees in Bombay, Punjab, Burma, and the North-West Frontier, $1\frac{3}{4}$ Rupees in the Central Provinces, a little over $1\frac{1}{2}$ in the United Provinces and Bengal, and only $1\frac{1}{2}$ in Madras. In Bombay, the United Provinces, the Punjab and the Central Provinces, a large part of the Municipal revenue was derived from Octroi. In other provinces there was no Octroi. There was in Madras, however, a toll levied on roads, and Bombay and Assam also levied it. The principal revenue in Madras and Bengal was derived from taxes on houses and lands, Bombay, Central Provinces and Burma also levying such taxes. In some provinces there were taxes on professions and trades, and in all, on carts and vehicles.

The Municipal Boards had powers of taxation within certain limits with the previous sanction of the

Local Government. The Rural Boards had no powers of taxation. Their sole source of income was the one-anna cess on Land Revenue and came to about $2\frac{1}{2}$ crores, for the whole of British India. Another $2\frac{1}{2}$ crores was received from various other sources including a small grant from Government. Thus, the incidence of taxation was about 4 annas per head. Even of this cess all the Local Boards did not get the whole amount. Some of them *e.g.*, those in the United Provinces, the Central Provinces, the Punjab, etc. had to make contributions to the Provincial Governments for special services.

Review and Criticism.—The Taxation Enquiry Committee has pointed* out two features of the development of Local Self-Government in British India: "In the first place the process has been, not that of a federation of smaller units into a larger unit to deal with common interests which they can not deal with individually, but the much more difficult process of devolution of powers by the larger unit to the smaller ones. In the case of the towns, Local Self-Government began in the big cities, to be followed later by extension to the larger towns in the mofussil, and later to village unions or notified areas. In rural areas the original unit was the District Board. When it was found that that was unwieldy and had a tendency to divert its attention too much to the headquarters, some of its powers and funds were transferred to bodies representing portions of districts, known in some provinces as Local and in others as Taluk Boards. Even these were found too large to be of use to the villages, and during the last few years there has been a tendency for the revival of the Village Panchayat."

* Report of Taxation Enquiry Committee 1924 - paras 394-95

Secondly, self-governing bodies in India have been severed from all connection with police functions. In Europe these functions form an important part of the local administration and in India also they did so in former times. But as local bodies grew in power they were relieved of these functions, partly because of their lack of funds and partly because of the policy of centralization.

Turning next to the extent of progress made by Local Self-Government during fifty years (1865-1915) it is clear that it was very small. The funds that were allotted to the Local Boards were inadequate for the many functions for which they were made responsible. The Bureaucracy did not appreciate the value of these Boards. The District Officers—who were generally the Chairmen of the Rural Boards—had everything in their own way. The proportion of ex-officio and nominated members was very large. Further, the Boards had very limited financial powers. They could neither tax nor borrow on their own account. The question of Local Self-Government received some attention when a special Department was created about 1908 to deal with it and entrusted to a Member of Executive Council of the Governor-General. Also special grants—though of a non-recurring character—were made to Local Bodies for the improvement of water-supply, sanitation etc. and the Government of Lord Hardinge, in a comprehensive Resolution that was issued in 1915, and embodying the views of the Government of India on the Report of the Decentralization Commission, assumed a most sympathetic attitude towards Local Self-Government. After going over the various obstacles that had prevented the development of Self-Government in the past and

after indicating the lines on which the Municipal Boards, the District and the Taluka Boards, and the Village Panchayats and Unions were to advance in future, the Resolution declared that its object was to mark a definite advance in devolution and political education. The Resolution was framed in 'a spirit of prudent boldness, calculating risks but not afraid to take them in the cause of progress.'

The advance of Local Self-Government after the Announcement of August 1917 will be dealt with in a subsequent chapter.

CHAPTER XII

ASSOCIATION

(57) APPOINTMENT OF INDIANS TO IMPORTANT POSTS

It must have been seen that Decentralization as a means of mitigating the defects of a Bureaucracy has very serious limitations. Its essence lies in the shifting of authority from higher to lower officials with a view to obtaining simplicity, smoothness and despatch in administration. Of itself it does not give an increased share in administration to the *people*. Extensive decentralization is compatible with the complete exclusion of the people from a voice in the conduct of Government. Hence the principle of decentralization had to be combined with that of Association. Association was brought about by (a) the establishment of Local Self-Government as explained in the last Section, by (b) the appointment of Indians to responsible posts in administration, and most important of all, by (c) the inauguration of Legislative Councils containing a popular element.

Even prior to the introduction of the Reforms, Lord Morley had appointed two Indians to his own Council. Similarly Indians were appointed to the Executive Councils of the Governor-General and of the Governors of Madras, Bombay, and Bengal. In this way Indians were allowed to enter the very citadel of Bureaucracy. But even there they were hopelessly outnumbered by their European colleagues

and could not do much more than represent the Indian point of view.

Similarly the need of introducing more Indians in the Public Services was admitted but as no appreciable progress was made in this direction, it will be better to take up the whole subject of the Indianization of the Services in connection with Responsible Government.

We, therefore, turn to the remaining form of Association *viz.*, the establishment of popular Councils.

(58) LEGISLATIVE COUNCILS UP TO 1909

Let us then consider the Association of Indians in the making of laws. We have already seen how the Governor-General in Council and the Provincial Governors-in-Council used to make laws known as Regulations prior to 1833. The Charter Act of that year, as explained in Section 31 of this book, brought about an important reform in the state of laws and the legislative machinery. It gave to the country its first rudimentary legislature consisting of the Governor-General in Council with the addition of a Law Member. The despatch of 1834 reiterated the first principle of legislation that 'no law, except one of an occasional kind, or arising out of some pressing emergency, should be passed without having been submitted to mature deliberation and discussion'. The Provincial Governors-in-Council were deprived of their power to make Regulations. But the Governor-General-in-Council was advised to take into consideration drafts of laws submitted by the Provincial Governments and suggestions coming from well-informed and influential persons, official as well as non-official, for the improvement of laws. In practice the concentration of

all legislative power in the Governor-General in Council was found to have defects of its own. The members of the Council were mostly drawn from the Bengal Service and had little knowledge of conditions in Bombay and Madras and could not satisfactorily handle laws for these two Presidencies. To Lord Dalhousie belongs the credit of differentiating the Legislative Council much more decisively from the Executive. The Act of 1853, for which he was in great part responsible, placed the "fourth Member" on the same footing with the "ordinary" members of the Council, and the Council, for legislative purposes, was enlarged by the addition of 6 members, namely the Chief Justice and one Puisne Judge of the Supreme Court at Calcutta, and 4 official representatives of the Local Governments of Madras, Bombay, Bengal and North-West Province.

The Act of 1853 recognized another requisite of sound legislation, namely, publicity. All projects of laws, and the debates of the Council upon them were to be given wide publicity. Thereby the people get the opportunity of criticising legislative measures. Proper deliberation *within* the Council, and wide publicity *outside* the Council are necessary for satisfactory legislation.

The Indian Councils Act of 1861.—But it was soon clear that even Lord Dalhousie's improvement did not suffice to meet the needs of the time. (1) Madras and Bombay still complained of the preponderance of voice which Bengal exercised; (2) the huge extent of territory for which a single Council legislated made it impossible for matters to be handled with adequate local information and experience; (3) moreover, as Sir

Charles Wood bitterly complained afterwards, the Council became a sort of Debating Society or Petty Parliament, and arrogated to itself the right of inquiry into and redress of grievances. (4) Above all, the terrible events of the Mutiny brought home to Government the dangers arising from the entire exclusion of Indians from association with the legislation of the country.

It was to remove these defects that in 1861 was passed what Chailley has called "the primary Charter of the present Indian Legislatures"* as the result of much correspondence between Lord Canning and Sir Charles Wood. The legislative power was restored to the Councils of Bombay and Madras and new Councils were allowed to be established in other provinces. This was done for Bengal (1862), for North-Western Province (1886), for Burma and the Punjab (1897), and for Eastern Bengal and Assam in 1905. Thus the first step was taken in the direction of legislative decentralization. But there were rigid restrictions placed upon the powers of the Provincial Councils. Formerly the laws enacted by the Local Councils had been complete in themselves and came into operation of their own force. From 1861 the previous sanction of the Governor-General was made requisite for legislation by the local Councils in certain cases, and all Acts of the local Councils required the subsequent assent of the Governor-General in addition to that of the Governor. The Governor-General thus became the head of all legislative authority in British India.

The third defect—namely the inconvenient interference of the Council established by the Act of

* Chailley : 385

1853 with the acts of the Executive Government—was removed by strictly confining the functions of the new Councils to legislation.

The fourth defect (exclusion of Indians) was removed by reinforcing the Central Council with additional members—not less than six and not more than twelve—*nominated* for two years, of whom not less than half were to be *non-officials*. It is well to fully appreciate the meaning of this step. Sir Charles Wood's speech in the House of Commons on the Indian Councils Act of 1861 is worthy of perusal even now. There are, he said, two modes of legislation: one in which the Executive alone makes laws and the other in which laws are made by a representative body. Though the former was too primitive to be adopted, the latter had difficulties of its own. "Every one who considers the condition of India will see that it is utterly impossible to constitute a representative body in that country. You can not possibly assemble at any one place in India persons who shall be the real representatives of the various classes of the Native population of that Empire." In the absence of representative bodies, the Executive Council of the Governor-General was to be *enlarged* by the addition of a few non-officials—Indians as well as European. It was not easy to get, in the then state of education, Indians familiar with Western methods of Government. The kind of leaders the Act had in view were Indian Rajas, or their Dewans, or great Land-holders or retired officials of high rank. But none of these dreamt that the Councils in which they sat would become in course of time more and more representative of the Indian population and would claim a measure of control over the Executive.

The student will find it convenient to follow the subsequent history of the Councils by considering (a) changes in their Constitution and (b) expansion of their Functions. Under the first, he should consider (1) the total membership of the Councils, (2) the proportion of official and non-official members, and (3) the method of appointment of members. Under the second, he should consider how the Functions of the Councils came to be enlarged in course of time.

The Indian Councils Act of 1892.—Before long the Councils established under the Act of 1861 proved inadequate. The newly established Universities had given an impetus to higher education and the number of Indians qualified by education and experience of public affairs to take part in the Councils was fast increasing. Also the demand of the educated classes began to find expression since the inauguration of the Indian National Congress in 1885. People wanted something more than a Council that was small in size and circumscribed in functions. The question of the reform of the Councils, therefore, began to engage the attention of the Government of Lord Dufferin. Finally the Indian Councils Act of 1892 was passed. Mr. (afterwards Lord) Curzon who was then the Under-Secretary of State explained that the object of that Act was to widen the basis and expand the functions of Government in India; and to give further opportunities than then existed to the non-official and Native elements in Indian society to take part in the work of Government, and in that way “to lend official recognition to that remarkable development both of political interest and political capacity that had been visible among higher classes of Indian

society since the Government of India, was taken over by the Crown in 1858."

Though as a result of this Act the total membership of the Councils was increased, there was great opposition to the principle of election being introduced in them. Lord Cross, the then Secretary of State, said "It would be unwise to introduce a fundamental change of this description without much more positive evidence in its favour than was forthcoming." But the Government of Lord Lansdowne urged that they should not be precluded from resort to some form of election where conditions justified its trial; and they asked for power to make rules for the appointment of additional members by nomination or otherwise. They had their way. The compromise between the conservative principle of nomination and the radical method of election was embodied in the so-called "Kimberley Clause" (due really to Lord Northbrook). This clause empowered the Governor-General in Council, with the sanction of the Secretary of State in Council, to make regulations as to the conditions of nomination of the additional members to the Council. The intention of Parliament, in conferring this rule-making power on the Government of India, was explained to be as follows:—

"Where Corporations have been established with definite powers upon a *recognized* administrative basis (*e. g.*, Municipalities and District Boards), or where Associations have been formed upon a substantial community of legitimate interests, professional (*e. g.*, Universities), commercial (*e. g.*, Chambers of Commerce), or territorial (*e. g.*, Land-holders etc.), the Governor-General and the local Governors might find convenience and advantage in consulting from time to time such

bodies, and in entertaining at their discretion an expression of their views and recommendations with regard to the selection of members in whose qualifications they might be disposed to confide."

Technically, the function of the nominating bodies was to be that of recommendation only: but the political sense of the Government of India told them that it would be impracticable either to insist on selection from a panel of names proffered, or to reject individual nominations at discretion. This course was bound, in course of time, to lead on to election pure and simple.

So far about widening the basis of the Councils. The Act of 1892 also enlarged their functions. The Councils were allowed, in addition to their legislative function, to hold a discussion on the annual financial statement, and also to ask questions under prescribed conditions and restrictions.

(59) MORLEY-MINTO REFORMS

The next stage of reform is associated with the name of Lord Minto and Lord Morley. The final proposals were contained in the Despatch of November 27th, 1908. The Parliamentary Act embodying the changes received Royal assent on 25th May 1909. It is in the direction of further enlarging the Councils, and of making them more representative and effective that the value of the Reforms lies.

We may, as before, consider the changes made by the Act of 1909 under the heads of (A) Constitution and (B) Functions.

The constitution of the Councils was changed in *three* respects. (1) Numbers, (2) Proportion of official

and non-official members, (3) Methods of appointment or election.

Numbers.—These, as they were laid down under the Act of 1892, were as shown in column 2 of the Table below. The numbers were doubled or more than doubled under the Act of 1909 as can be seen from columns 3 and 4 of the same Table.

Serial Number	PROVINCE	Maximum number of Additional Members under the Act of 1909	Maximum number of Additional Members under the Act of 1912	Ex-officio. (c)	Law Officers.	Other Officials.	Total Officials. (e)	Experts.	Non-officials.	Total Nominated. (f)	Elected.	Majority. (g)
1	India	16	60	68	8	...	28	36	...	5	27	Officialst N.O.. 6
2	Madras	20	50	48	4	1	16	20	2	5	21	10
3	Bombay	20	50	48	4	1	14	18	2	7	21	13
4	Bengal	20	50	53	3	...	16	19	2	4	28	7
5	Bihar Orissa	(a)	50	44	3	...	15	18	1	1	21	7
6	United Province	15	50	49	...	...	20	20	2	6	21	7
7	Punjab	15	30	26	...	...	10	10	2	6	8	4
8	Burma	15	30	17	...	...	6	6	2	8	1	3
9	Assam	20(b)	30	25	...	...	9	9	1	4	11	6

Proportion of Official and Non-official Members.—

Under the Act of 1861 at least one half of the additional members of the Legislative Councils of the Governor-General and of Madras and Bombay, and at least one-third of the members of the other Legislative Councils had to be non-officials. An official majority was not required by Statute, but in practice was always maintained before the Act of 1909 in all the Provincial Councils except Bombay.

Under the Regulations of 1909 and 1912 there was to be an official majority in the Governor-General's Legislative Council and a non-official majority in all other Legislative Councils. The proportion as fixed by those Regulations is given in the above statement.

The significance of the distinction between the official and non-official members arose out of the constitutional view that all official members were bound to vote with the Government on all Government measures. The Provincial Governments were strictly subordinate to the Government of India and the latter to Parliament through the Secretary of State. Whatever legislative measure Government introduced in the Legislative Council was in accordance with the instructions of the Secretary of State or with the decision of the Executive Council. Not only the members of the Executive Council, therefore, but the nominated official members were bound to support the legislative measure and oppose any amendments which were not in conformity with the plans of Government. This was clearly laid down by Lord Elgin in the debate on Cotton Duties Bill which took place in the Indian Legislative Council in December 1894.

He said that official members can not enjoy freedom of speech or vote in the Council so long as they are responsible to the Government which nominated them. "Only in an entirely irresponsible body can members act entirely as their inclination leads them. In every legislative body a man must sit, unless he has an hereditary right, by what in modern parlance is called a mandate, and that mandate must be given by some authority. I need not remind you that in a Parliament a man is not free to act exactly as he pleases, he is distinctly subject to the mandate he has received from his constituents, and practice has shown that even this is not sufficient, but to make Parliamentary Government effective, it has been found necessary to introduce party management, and the bonds of party, in the present day, certainly show no sign of being relaxed. Here we have no election and, I am glad to say, no party, but every man who sits here sits by the authority and sanction of Parliament, and to say that he can refuse to obey the decisions of Parliament would be absurd." Thus discipline required the official members to vote according to the dictates of Government. Now an official majority was retained in the Council of the Governor-General because Lord Morley laid it down that the Governor-General's Council "in its legislative as well as executive character should continue to be so constituted as to ensure its constant and uninterrupted power to fulfil the constitutional obligations that it owes, and must always owe, to his Majesty's Government and to the Imperial Parliament". On the other hand an official majority was not insisted upon in the Provincial Councils because of certain safeguards that were available to the Governor or Governor-General.

Thus there was the power of veto that could be exercised on occasion; there were certain statutory restrictions upon the powers of the Provincial Councils; and, in any case, the Legislative Council of the Governor-General possessed concurrent powers of legislation.

3. *Methods of Appointment or Election.*—Under the Act of 1861 all the “additional” members were nominated, the only restriction being the requirement to maintain a due proportion of non-official members

The Act of 1892 recognised the principle of indirect election as contained in the ‘Kimberley’ clause. The Regulations under the Act enabled certain recognized bodies and associations to recommend candidates, who, though there was no obligation to accept them, were rarely refused in practice.

Under the Act of 1909 the additional members must include not only nominated members but also members elected in accordance with Regulations made under the Act.

With regard to the principle of representation, Lord Minto’s Government came to the conclusion that (1) election by the wishes of the people is the ultimate end to be secured, whatever may be the actual machinery adopted for giving effect to it, that (2) in the circumstances of India representation by classes and interests is the only practicable method of embodying the principle in the constitution of the Legislative Councils. Sir Charles Aitchison, a member of the Executive Council in 1892, was quoted to the effect “the division of the people into creeds, castes, and sects with varying and conflicting interests rendered representation in the European sense an

obvious impossibility." It was therefore decided that for certain limited interests (Corporations of Presidency Towns, Universities, Chambers of Commerce, Planting Communities and the like) limited electorates must exist as they then existed. Difficulties began when one went beyond these limited electorates and had to deal with large and widespread interests or communities such as the landholding or professional classes; or with important minorities such as Mahomedans in most province in India, and Sikhs in the Punjab. No uniform system was possible throughout India. Class electorates were to be created where that was practicable and likely to lead to good results, and in their failure or defect, it might be necessary to have recourse to nomination. Accordingly, separate representation was given to the Mahomedans, and to the large land-owning interests. The remaining constituencies for the Provincial Councils—which constituted the only means of representation of the people at large—were constituted out of Municipalities and District Boards voting in groups. Thus in the case of the legislative Council of the Governor-General, the 27 elected members were returned as follows: 13 by the non-official members of the Provincial Councils; 6 by the landholders of Madras, Bombay, Bengal, U. P., B. and O., and C. P.; 5 by the Mahomedans of the preceding provinces except C. P.; 1 by the Mahomedan landholders the U. P., or the Mahomedans of Bengal in alternate years; and 2 by the Bombay and Calcutta Chambers of Commerce.

The composition of the Provincial Councils under the Regulations of 1912 is given in the following Table :—

Name of the Council	Ex-officio	Official.	Non-Official.	Corporation	Mun. & Dist Boards	University.	Landholders.	Planting Community.	Mahomedans	Ch. of Com.	Indian Commerce	Total
Madras ...	4	16	5	1	9	1	6	1	2	1	1	46
Bombay ...	4	14	7	1	8	1	3	..	4	2	2	48
Bengal ...	3	16	4	1	10	1	4	1	5	2	1	Miscel. 53
B. and O. ...	3	15	1	..	10	..	5	1	4	..	..	44
U. P. ...	..	20	6	..	13	1	2	..	4	1	..	49
Punjab ...	..	10	6	..	6	1	..	..	..	1	..	26
Burma ...	.	6	8	..	..	..	..	..	..	1	..	17
Assam ...	..	9	4	..	4	..	2	3	2	..	..	25
C P ..		10	7		5	.	2	.			.	25

Changes in the Functions of the Councils.—Not less important than these changes in the constitution of the Councils were the changes in their functions. As has been already pointed out, by the Act of 1861 the Councils were confined strictly to legislation. The Act of 1892 gave members power to discuss the budget but not to move resolutions about it or to divide the Council. It became the practice accordingly to allot annually one or two days to the discussion of a budget already settled by the Executive Government. Lord Morley's Act empowered the Councils (1) (a) to discuss the budget at length before it was finally settled; (b) to propose resolutions upon it; and (c) to divide upon those resolutions. Not only on the budget, however, but (2) on all matters of general public importance resolutions might henceforth be proposed and divisions taken. The resolutions were to be expressed and to operate as recommendations to the Executive Government. On certain questions, among which may be mentioned matters affecting Native States, no resolutions could be moved. Any resolution might be disallowed by the Head of the Government without his giving any reason other than that in his opinion the resolution could not be moved consistently with the public interest. (3) At the same time the right to ask questions of the Government was enlarged by allowing the Member who asked the original question to put a supplementary one.

Criticism.—The Morley-Minto Reforms though a great improvement upon the Act of 1892, soon failed to satisfy the aspirations of the people. The reasons are not far to seek. The Councils were defective in their constitution and circumscribed in their functions. They were not properly representative of the whole

population. Narrow franchises and indirect elections failed to encourage in Members a sense of responsibility to the people. The Councils had no real powers in legislation and finance. Power remained with Government and the Councils were left with no functions but criticism. The subordination of the Provincial Governments to the Government of India and of the latter to the Secretary of State was not relaxed. The Councils in no sense were a step towards Responsible Government. Indeed Lord Morley openly declared that he would have nothing to do with the Reforms if they were construed as a step to the establishment of a Parliamentary system in India. In fact the Morley-Minto Reforms were an attempt to graft the principle of constitutionalism upon the former autocracy of British rule. They are the final outcome of the old conception which made the Government of India a benevolent despotism which might as it saw fit for purposes of enlightenment consult the wishes of its subjects. People were soon disillusioned.

PART IV

RESPONSIBLE GOVERNMENT

CHAPTER XIII

PROVINCIAL DEVOLUTION

(60) GESTATION OF THE MONTAGU-CHELMSFORD REFORMS *

Having considered in the last two Chapters how neither the principle of Decentralization nor of Association succeeded in modifying the character of Indian Bureaucracy to the extent demanded by public opinion, it is now time to turn to the Reforms associated with the names of Mr. Montagu and Lord Chelmsford. The Reforms merely carry forward the work of the last sixty years of direct British administration in India; for, as was profoundly remarked by the late Mr. Gokhale, one of the peculiar conditions of the peculiar position of the British Government in this country is that it should be a continuously progressive Government.† Nor have the people of India stood still. "The political philosophy and axioms of the West have become an essential part of Indian life, and when its Education came to India it brought with it the politics of Nationality, Liberalism, Freedom."‡ Indian aspirations were quickened by the

* Horne: chapter III.

† Speeches: 443.

‡ Ramsay MacDonald: 2.

outbreak of the Great War. It became a foregone conclusion that some great step in political advance of the country was inevitable in the near future though nobody could tell its exact nature. Political theorists, therefore, began to adumbrate schemes of their own. One of the first was that of Mr. Gokhale, elaborated at the instance of Lord Willingdon and published posthumously in 1917. Next came the scheme of Mr. Curtis of the Round Table. This is an Organization founded in 1910, with branches in all parts of the British Empire, and having for its object the dispassionate study of Imperial problems. The account given by Mr. Curtis of the origin and development of the scheme of 'Dyarchy' is specially interesting in as much as the essential feature of that scheme was adopted in the Act of 1919. Mr. Curtis felt that "Responsible Government" was the *sine qua non* of the success of political Reform in India, and a sketch was prepared of the kind of new Government that was proposed to be set up in a province to give effect to Responsible Government. The proposal was "that for departments (of the Provincial Government) in which it can be done safely some form of responsible as distinct from merely representative government should be instituted forthwith, while the remaining departments would continue to be administered under the present (*i. e.*, pre-Reforms) system, the functions of constitutional ruler in the one case and of actual administrator in the other being united in the person of the Governor..... The suggestion is that for such of the departments of Government as were made over to it, the (provincial) Legislature should be really suprême, and should be administered by an Executive chosen from its own

members and responsible to it." As will be presently seen, this is Dyarchy.

Reference should also be made to the Scheme prepared by Nineteen Members of the Viceroy's Legislative Council, which was subsequently adopted by the Congress and the Muslim League in December 1916. Its main features were (a) direct elections to the Provincial Councils; (b) Resolutions of the Provincial Councils to be absolutely binding upon the Governor; (c) a $\frac{4}{5}$ majority of elected members in the Central Legislature; (d) complete provincial autonomy; (e) half the number of members of the Executive Councils—Provincial and Central—to be Indian and to be elected by the elected members of the Legislature concerned.

(61) THE ANNOUNCEMENT OF 20TH AUGUST 1917

The discussion of these and other schemes made the political atmosphere tense with expectations when Mr. Montagu made his Announcement in the House of Commons.

"The policy of His Majesty's Government, with which the Government of India are in complete accord, is that of the increasing association of Indians in every branch of the administration and the gradual development of self-governing institutions with a view to the progressive realization of responsible government in India as an integral part of the British Empire... ..I would add that progress in this policy can only be achieved by successive stages. The British Government and the Government of India, on whom the responsibility lies for the welfare and advancement of the Indian peoples, must be judges of the time and measure of each advance and they

must be guided by the co-operation received from those upon whom new opportunities of service will thus be conferred and by the extent to which it is found that confidence can be reposed in their sense of responsibility."

The Act of 1919.—Mr. Montagu's Announcement was followed by his visit to India. The Viceroy and the Secretary of State toured all over the country and their proposals were published in July 1918 in the Report that has since become popular under the name of "Montford" Report. The Report was preceded and followed by an enormous amount of preliminary work in the Provincial and Central Secretariats for being utilized by various Committees. The Report indicated three Committees for that purpose: the Franchise Committee and the Functions Committee presided over by Lord Southborough, and the Committee on the Home Administration of India under the presidency of Lord Crewe. The Government of India in their turn addressed a series of Despatches to the Secretary of State in Council on the subject of the Reforms. It was generally agreed that the net result of the modifications suggested by the Government of India would have been a "whittling" down of the original proposals of the Montford Report.

The Government of India Bill, based on all this material, was introduced in the House of Commons on 2nd. June 1919, and after its second reading was referred to a Joint Select Committee of both the Houses. The Report of this Joint Committee is a document of very great importance. The Bill, amended in accordance with the Committee's recommendations

260 (59) ANNOUNCEMENT OF 20TH AUG. 1917

and passed by both the Houses, received Royal assent on 23rd December 1919.

Meaning of the Announcement.—Coming back to the Announcement of August we may say that, in the words of Lord Chelmsford, it had three features (1) The progressive realization of Responsible Government was given as the key-note and objective of British policy in India; (2) substantial steps were to be taken in that direction at once; (3) that policy was to be carried out by stages; or shortly "the gradual transfer of responsibility to Indians." The Announcement definitely abandoned the conception of the British Government as a benevolent despotism and substituted in its place the conception of British Government as a guiding authority whose role it would be to assist the steps of India along the road that in the fulness of time would lead to complete Self-Government within the Empire. As His Majesty said in the Proclamation announcing the Reforms of 1919: "There is one gift which yet remains, and without which the progress of a country can not consummated—The right of her people to direct her affairs and safeguard her interests. The defence of India against foreign aggression is the duty of common Imperial interest and pride. The control of her domestic Concerns is a burden which India may legitimately aspire to take upon her own shoulders. The burden is too heavy to be borne in full until time and experience have brought the necessary strength; but opportunity will now be given for experience to grow and for responsibility to increase with the capacity for its fulfilment."

(62) DEVOLUTION OF AUTHORITY

The next question is how and where to introduce Responsible Government in India? Is it to be introduced in the Central or Provincial Government? Now the Government of India cannot be made "responsible" to the Indian people unless its responsibility to British Parliament is relaxed. Parliament had hitherto performed the duty of controlling and criticising the Government of India in the interests of the Indian people. Parliament must delegate, little by little, from itself to the people of India the power to criticise and control the Government. Then and to that extent alone can the Government of India be responsible to the Indian people. The more of such power is given to the people of India the less will be left in the hands of the British Parliament.

"But this process of relaxation cannot go on at the same pace on all levels. The Secretary of State's relaxation of control will be retarded, if for no other reason, by the paramount need of securing Imperial interests; that of the Government of India by their obligation of maintaining the defence of India, and of the Provincial Governments by the securing of law and order. As we go upwards, the importance of the retarding factor increases, and thus it follows that popular growth must be more rapid and extensive in the lower than in the upper levels."*

On these general considerations the M. C. Report laid down four formulæ: (1) There should be, as far as possible, complete popular control in Local Bodies, and the largest possible independence for them of outside control.

(2) The Provinces are the domain in which the earlier steps towards the progressive realization of responsible government should be taken. Some measure of responsibility should be given at once, and our aim is to give complete responsibility as soon as conditions permit. This involves at once giving the provinces the largest measure of independence, legislative, administrative, and financial, of the Government of India which is compatible with the due discharge by the latter of its own responsibilities.

(3) The Government of India must remain wholly responsible to Parliament, and saving such responsibility, its authority in essential matters must remain indisputable, pending experience of the effect of changes now to be introduced in the provinces. In the meantime the Indian Legislative Council should be enlarged and made more representative and its opportunities of influencing Government increased.

(4) In proportion as the foregoing changes take effect, the control of Parliament and the Secretary of State over the Government of India and the Provincial Governments must be relaxed.*

(63) STANDARDIZATION OF PROVINCES AS GOVERNORS' PROVINCES

Before proceeding to consider the various measures for the relaxation of superior control over the Provinces we must first point out that the Provinces have been levelled up and standardized as "Governors' Provinces". Before the Reforms there were, as we have already seen, three kinds of Provinces according as they were under Governors, Lieutenant-Governors or Chief Commissioners. The Royal Commission on

* M. C. Report : paras 188-191.

Decentralization was in favour of setting up Executive Councils in those provinces where they did not exist and it pointed out the advantage of this measure. An important stage in the growth of the provincial system is marked by the transfer of the Imperial Capital from Calcutta to Delhi announced at the historic Coronation Durbar of 1911.

The correspondence between the Secretary of State and the Government of Lord Hardinge on the subject of the transfer shows that larger and deeper considerations than the mere removal of a cause of popular agitation regarding Bengal Partition were at the root of the proposed change. The transfer of the Capital from Calcutta was urged on two grounds—(a) The anomaly and inconvenience resulting from its being the Capital of the Imperial and Provincial Governments. (b) The peculiar political situation arising in Bengal since the Partition made it desirable to withdraw the Government of India from its provincial environment. The advantages of the Capital being transferred to Delhi were urged to be three:—(a) Political: "The maintenance of British Rule in India depends on the ultimate supremacy of the Governor-General in Council and the Indian Councils' Act of 1909 itself bears testimony to the impossibility of allowing matters of vital concern to be decided by a majority of non-official votes in the Imperial Legislative Council. Nevertheless it is certain that in the course of time, the first demand of Indians for a larger share in the Government of the country will have to be satisfied, and the question will be how this devolution of power can be conceded without impairing the Supreme Authority of the Governor-General in Council. The only probable solution of

the difficulty would appear to be gradually to give provinces a larger measure of self-government, until at last India would consist of a number of administrations autonomous in all provincial affairs, with the Government of India above them all, and possessing power to interfere in cases of misgovernment, but ordinarily restricting its functions to matters of Imperial concern. In order that this consummation may be attained, it is essential that the Supreme Government should not be associated with any particular Provincial Government. The removal of the Government of India from Calcutta, therefore, is a measure which will, in our opinion, materially facilitate the growth of local self-government on sound and safe lines. It is generally recognised that the Capital of a great Central Government should be separate and independent, and effect has been given to this principle in the United States of America, in Canada, and in Australia. Other advantages of Delhi might be more briefly stated thus, (b) its central position and splendid communications, its good climate for seven months of the year and its proximity to Simla would make the annual migration to the Hill Station less costly and tedious; (c) its great historical associations under Hindu and Mahomedan Rules.

The transfer of Capital to Delhi was availed of to rectify the error of the Bengal Partition: the five Bengali-speaking districts *viz.*—the Presidency, Burdwan, Dacca, Rajshahi, and Chittagong were formed into a Presidency under a Governor-in-Council (2) Bihar, Chota Nagpur, and Orissa were formed into a new province under a Lieutenant-Governor with a Legislative Council at Patna. (3) Assam was restored to a Chief Commissionership.

Similarly the power given by S. 3 of the Government of India Act 1854 was exercised in 1912 to transfer the city of Delhi and part of the Delhi District to the immediate authority of the Governor-General in Council to form it into a Chief Commissionership to be known as the Province of Delhi. The intention was to make the site of new Capital and its surroundings an *enclave* occupying the same kind of position as Washington and the District of Columbia in the United States.

The transfer of the Capital to Delhi prepared the way for the Provinces being put upon a uniform basis with an Executive consisting of a Governor-in-Council and Ministers and a Legislative Council.

But though each Province is to have a Governor the status of all Governors is not the same. There are three features which distinguish the Governors of the Presidencies of Madras, Bombay and Bengal from the remaining Provincial Governors.

(a) *Appointment*.—Governors of the older Provinces are appointed by His Majesty and previous consultation with the Governor-General is not essential; and they are generally drawn from the ranks of British Peers or politicians. In appointing the Governors to the other Provinces the Governor-General has to be consulted, for most of them are to be drawn from the senior ranks of the Indian Civil Service. A Governor drawn from the Civil Service has first-hand knowledge of Indian conditions and practical experience of administration; but there is little or no chance, in his case, of a wider outlook and more sympathetic insight being brought to bear upon problems of administrations. Indian opinion, therefore has never received with approval

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the policy of appointing Governors from the Civil Service.

(b) The New Governors do not enjoy the privilege of direct access to the Secretary of State (a remnant of the former independence of the two Presidencies of Madras and Bombay).

(c) Finally, their pay is smaller than that of their older confreres.

(64) APPROACH TO PROVINCIAL AUTONOMY

With the Provinces standardized, the next step is to give them "the largest measure of independence, legislative, administrative and financial, of the Government of India which is compatible with the due discharge by the latter of its own responsibilities", in other words to give them 'provincial autonomy'. No expression is so freely used in current political discussion as Provincial Autonomy. And yet no principle is more difficult to understand or to put into actual operation. Sir Frederick Whyte, the first President of the Legislative Assembly, well points out * that it is used to describe two separate conditions of Provincial Government. "In current political controversy it wrongly covers *both* the freedom of a Provincial Government from external control by the Government of India *and* the internal political conditions of representative and responsible government. The true meaning of the word lies in the former interpretation. A province may enjoy provincial autonomy without what are commonly called free institutions. That is to say, in its true meaning provincial autonomy tells us nothing of the condition of domestic government prevailing in any particular province or state". This is clearly brought

* India: a Federation ? pages 36-37

out by the fact that even before the advent of the principle of Responsible Government demand for provincial autonomy was made by statesmen like Gokhale and it formed a cardinal feature of the famous Durbar Despatch of Lord Hardinge. But it is important to note that provincial autonomy was then advocated more as a palliative to the worst defects of bureaucratic centralization than as a condition of Responsible Government. The Reforms Act emphasized the latter aspect. "Whereas concurrently with the gradual development of Self-Governing institutions in the provinces of India it is expedient to give to those provinces in provincial matters the largest measure of independence of the Government of India which is compatible with the due discharge by the latter of its own responsibilities." The two questions of Responsible Government in the provinces and provincial autonomy were joined together by the Act and no progress was possible in the former unless there was a substantial attainment of the latter.

But though it is natural to mix up the two ideas of provincial autonomy and responsible Government in the provinces and though one is a condition for the realization of the other the expression should be always used to connote provincial independence of the Government of India in matters of administration, finance and legislation.

The extent of independent powers conferred upon the Provinces in matters of finance, legislation and administration has been carefully defined in what are known as "Devolution Rules". They have been framed under various sections of the Government of India Act and cannot be changed by the Indian Legislatures or the Government of India. They form an

integral part of the Reforms scheme as put into force in 1919.

We have already seen that nothing led to the imposition of greater restrictions upon the powers of the provinces than the responsibility of the Secretary of State for everything that pertained to the Government, either of India as a whole or of any province. Excessive interference with provincial matters was facilitated by the absence of any clear line of demarcation between the spheres of the Central and Provincial Governments. The first step to provincial autonomy, therefore, consists in a definition of the spheres of the two Governments. In practice this meant a classification of the functions of Government into 'Central' and 'Provincial'. The task of classification was entrusted to the Functions Committee and the lists as finally settled are given in Appendix A.

The principle of classification was broadly this: where a subject was of all-India extent or importance it was 'centralized'; where the subject was of predominantly *local* interest, it was 'provincialized'. But it should be noted that the line of division is not as rigid as is to be found in 'federal' constitutions. Functions not specifically provincialized belong to the Central Government. Where any doubt arises as to whether a matter does or does not belong to a provincial subject, the Governor-General in Council is to decide it and his decision is final. Further, the Central Legislature has not been precluded from dealing with provincial subjects. The proviso "subject to Indian Legislation" in the list of provincial subjects means, that legislation on that subject, in whole or in part, or any powers reserved thereunder to the Governor-General in Council are recognised as an all India

subject. Provinces can legislate upon them only with the previous sanction of the Governor-General-in-Council.

Finally, the Government of India may use the provinces for the discharge of certain "agency" functions *e. g.*, collection of all-India revenues etc.

(65) FINANCIAL DEVOLUTION

Having divided the Functions into "Central" and "Provincial" our next step is to consider how larger powers have been given to the provinces in matters of Finance, Legislation, and Administration.

We may consider the subject of Financial Devolution under the following heads:—

(a) Provincial contributions to the Government of India.

(b) Relaxation of control over the Provinces.

Provincial Contributions.—We traced in an earlier section the growth of the system of Provincial Settlements. We there found how certain heads of revenue were "Indian", others were "Provincial", and the remaining were "Divided" *i. e.* the proceeds were shared by both the Indian and Provincial Governments. Land Revenue, Stamps, Excise, Income-tax, and Irrigation belonged to the last category. This system gave to the Government of India many opportunities of exercising control over provincial finance. The first step towards minimising this control was a complete separation of the Indian and Provincial sources of revenue which meant the abolition of the "divided heads". Certain proposals in this respect were contained in the Montford Report but as they were found to be inadequate a special Committee under Lord Meston was appointed to go into this whole question.

It recommended the provincialisation of Land Revenue, Excise, Irrigation, and Stamps and it recommended that the whole of Income-tax should go to the Central Government. Under such a redistribution of revenue-heads it was found that the Government of India would have to suffer a deficit of 10 crores of rupees. As it was impossible to raise the amount by increased taxation resort was had to the method of provincial contributions to the Central Government.

The guiding principles which the Meston Committee laid down with regard to the contributions were these: Though provincial contributions were inevitable for the first few years, any permanent financial arrangement which involved them was unsatisfactory, and the Central Government, therefore, should so direct its policy as to reduce those contributions with reasonable rapidity, and with a view to their ultimate cessation. (2) Though the initial contributions of each province must, in any case, be arbitrary, in view of the diversity of revenue and expenditure of each province and its past financial history, any such contribution ought to be regarded as temporary and provisional and steps ought to be taken to fix a standard and equitable scale of contributions towards which the provinces should be required to work by stages. (3) The initial contributions to be paid by each province in the year 1921-1922 were to be fixed arbitrarily.

Taking first the initial contributions the Meston Committee calculated that the Government of India would suffer a deficit to the extent of 983 lacs of Rupees in 1921-1922 and the provinces would gain about 1850 lacs of Rupees under the new arrangement. The Committee assessed the initial contribution on

ase in spending power" of each province, case of each on its own merits. The initial as were fixed as shown in the second he following Table.

Recommended contribution in 1921-1922, (in lacs)	Percentage of initial contribution to the total contribution	Percentage of standard contribution to the whole contribution	Standard percentage as finally accepted by the Government of India
348	$35\frac{1}{2}$	17	17/90
56	$5\frac{1}{2}$	13	13/90
63	$6\frac{1}{2}$	19	19/90
240	$24\frac{1}{2}$	18	18/90
175	18	9	9/90
64	$6\frac{1}{2}$	$6\frac{1}{2}$	$6\frac{1}{2}/90$
—	—	10	—
22	2	5	5/90
15	$1\frac{1}{2}$	$2\frac{1}{2}$	$2\frac{1}{2}/90$
983	100	100	90

ceed next to the Standard Contribution. basis for determining the standard con- as the capacity of each province to con- ch, in its turn, depends upon the economic the province. After considering all avail- nee, the Meston Committee recommended tage of the deficit shown in the 4th column ndards for the various provinces. The was to be reached within seven years by adations so that each province might have

It recommended the provincialisation of Land Revenue, Excise, Irrigation, and Stamps and it recommended that the whole of Income-tax should go to the Central Government. Under such a redistribution of revenue-heads it was found that the Government of India would have to suffer a deficit of 10 crores of rupees. As it was impossible to raise the amount by increased taxation resort was had to the method of provincial contributions to the Central Government.

The guiding principles which the Meston Committee laid down with regard to the contributions were these: Though provincial contributions were inevitable for the first few years, any permanent financial arrangement which involved them was unsatisfactory, and the Central Government, therefore, should so direct its policy as to reduce those contributions with reasonable rapidity, and with a view to their ultimate cessation. (2) Though the initial contributions of each province must, in any case, be arbitrary, in view of the diversity of revenue and expenditure of each province and its past financial history, any such contribution ought to be regarded as temporary and provisional and steps ought to be taken to fix a standard and equitable scale of contributions towards which the provinces should be required to work by stages. (3) The initial contributions to be paid by each province in the year 1921-1922 were to be fixed arbitrarily.

Taking first the initial contributions the Meston Committee calculated that the Government of India would suffer a deficit to the extent of 983 lacs of Rupees in 1921-1922 and the provinces would gain about 1850 lacs of Rupees under the new arrangement. The Committee assessed the initial contribution on

ase in spending power" of each province, case of each on its own merits. The initial ns were fixed as shown in the second he following Table.

Recommended contribution in 1921-1922; (in laes)	Percentage of initial contribution to the total contribution	Percentage of standard contribution to the whole contribution	Standard percentage as finally accepted by the Government of India
348	$35\frac{1}{2}$	17	17/90
56	$5\frac{1}{2}$	13	13/90
63	$6\frac{1}{2}$	19	19/90
240	$24\frac{1}{2}$	18	18/90
175	18	9	9/90
64	$6\frac{1}{2}$	$6\frac{1}{2}$	$6\frac{1}{2}/90$
—	—	10	—
22	2	5	5/90
15	$1\frac{1}{2}$	$2\frac{1}{2}$	$2\frac{1}{2}/90$
983	100	100	90

ceed next to the Standard Contribution. basis for determining the standard con- as the capacity of each province to con- ch, in its turn, depends upon the economic the province. After considering all avail- nce, the Meston Committee recommended tage of the deficit shown in the 4th column andards for the various provinces. The was to be reached within seven years by adations so that each province might have

sufficient time to adjust its finances to the growing burden.

The Meston Committee had to deal with a most difficult problem. They had to satisfy the Government of India without displeasing the provinces. The latter did not submit to the proposed percentages of contribution without violent protests. Some relief was granted to them by the Joint Parliamentary Committee. (a) Thus instead of making the whole of Income-Tax Central, it assigned to the Provinces three pies per rupee of additional income assessed after the Income-Tax Act of 1921. (b) Meston Committee contemplated that some provinces *e.g.*, Bombay, Bengal, Bihar and Orissa, and Central Provinces might pay more than their initial contribution in course of time. But the Joint Committee laid down that in no case should the initial contribution payable by a province be increased.

In case of an emergency the Governor-General in Council has the right of demanding a contribution from a province in excess of that fixed under the preceding rules. The contributions, further, are a first charge upon the provincial revenue and are not subject to the vote of the Provincial Council. The provincial contributions have been now remitted. The basis on which the initial contributions were calculated proved to be wrong. The finances of the Central and Provincial Governments were upset by the abnormal conditions that followed the war. The contributions without appreciably improving the position of the Central Government imposed a serious handicap in the provinces. Bengal got remission from the beginning Madras protested against its excessive initial contribution. Bombay protested against the loss of revenue

under Income-Tax. The United Provinces and the Punjab had their own grievances. The Government of India, therefore, began the policy of reducing or remitting the contributions in individual cases as soon as their own budget became a balanced budget and the last contributions were remitted in 1927-28.

Relaxation of Control: over budget.—Before the Reforms the provincial budgets were included in the budget of the Government of India. But after the Reforms almost complete freedom has been given to the provinces in the preparation of their budgets. Only the Government of India has to be supplied with certain information about (a) withdrawals from the provincial balances; (b) any loans that the Provincial Government may require from the Central Government; (c) the opening and closing balances of the Famine Insurance Fund; and (d) the paying off of the Provincial Loan Account.

Over Powers of Taxation.—An enlargement of the taxing powers of the province is a necessary complement of the new financial arrangements. Of course as the Central Government has a vital interest in the financial position of the provinces it cannot relax its control with any degree of finality. But there are many taxes of a strictly provincial or local incidence the imposition of which cannot affect the resources in which the Government of India have interest. Accordingly the taxing power of the Provincial Council has been enlarged by doing away with the requirement of the previous sanction of the Governor-General for bills imposing certain Scheduled taxes. Thus a Provincial Council may impose a tax mentioned in Schedule I, for the purpose of the Local Government, without the previous sanction of the Governor-

General *i. e.*, (1) a tax on land put to uses other than agricultural; (2) a tax on succession or acquisition by survivorship in joint family; (3) tax on any form of betting or gambling permitted by law; (4) a tax on advertisements; (5) on amusements; (6) on any specified luxury; (7) a registration fee; (8) a stamp duty other than duties the amount of which is fixed by Indian Legislation. Previous sanction of the Governor-General is also not required to allow a Local Authority *e. g.*, a Local Board or Municipality to impose a tax mentioned in Schedule II. *i. e.*, (I) a toll; (2) a tax on land or land values; (3) on buildings; (4) on vehicles or boats; (5) on animals; (6) on menials or domestic servants; (7) an octroi; (8) a terminal tax; (9) a tax on trades, professions, and callings; (10) a tax on private markets; (II) a tax imposed in return for services such as a water rate, a lighting rate etc.

The Governor-General in Council may, at any time, by order, make any addition to the taxes enumerated in Schedules I and II.

Over Provincial Borrowing.—Freedom in this is a necessary part of the above programme. Before the Reforms the Central Government did all the borrowing for the Provincial Governments, who, in their turn, lent to the Municipalities and Local Boards and the agriculturists. Provincial borrowing was opposed on the ground that the Indian money market was very limited and if provinces competed with each other the rate of interest would go very high. But during recent years the number of the 'investing' public is increasing, and there are local sources of borrowing which are open only to local authority.

Devolution Rules accordingly provide that a Local Government may raise loans on the security of

revenues allotted to it—for meeting capital expenditure on constructions ‘of lasting public utility’ if the expenditure is so large that it cannot reasonably be met from current revenues, and if the Governor-General in Council is satisfied that the projected construction is likely to yield a prescribed return of interest. The Provincial Government may also borrow for expenditure on Irrigation Works for Famine Relief, for the financing of the Provincial Loan Account etc. For each Provincial Loan the sanction of the Governor-General in Council—specifying the amount of loan, the rate of interest, and the mode of repayment—must be obtained. The Government of Bombay was the first to take advantage of these borrowing powers, the Bombay Development Scheme and the Sukkar Barrage Scheme being undertaken on the strength of borrowed capital.

Provincial Loan Account.—Each Province, before the Reforms, used to borrow money from the Central Government, for the purpose of making advances to Agriculturists. These Provincial Loan Accounts were closed by Bengal, Punjab, Central Provinces, and Assam immediately, and others closed them by the end of 1925. A Provincial Loan Fund was created from which the Provinces are now allowed to borrow.

Advances to Local Governments by the Government of India.—The provinces, in addition to borrowing in the market, may receive advances from the Central Government for expenditure on Irrigation Works etc. The terms as to interest and repayment of such advances are to be determined by the Government of India.

Cash Balances.—Before the Reforms the revenues of the whole of India were treated as one and each

province was required to keep a minimum cash balance. Such balances were useful under the old system, because the Central Government was the banker of all public funds and it took precautions against withdrawals of funds which might disturb its often fine-drawn calculations of ways and means. After the Reforms the provincial revenues are paid into the public account of which the Governor-General in Council is the custodian, but under the Devolution Rules greater liberty has now been given to the provinces to draw upon their balances, provided due notice is given of the time and amount of withdrawal.

Famine Assignments.—The frequency and magnitude of famines in India have often thrown Indian Finance into disorder. A wide-spread famine means shrinkage of revenue at the very time when considerable outlays have to be made on famine relief or construction of protective works. The problem resolves itself into so distributing the loss of revenue and additional expenditure as would not throw out of gear either Provincial or Central finance. About 1917 Famine Relief Expenditure was made a divided head, the outlay being borne by the Central and Provincial Governments in the proportion of 3 to 1. Under the Reforms the expenditure has been provincialized and a Famine Insurance Fund has been inaugurated in each: the sum fixed for each province is as follows:—

In thousands of Rupees.				
Madras	...	...	...	661
Bombay	...	...	...	6360
Bengal.	...	...	...	200
United Provinces	...	...	...	3960
Punjab	...	...	...	381

	In thousands of Rupees.			
Burma	67
Bihar and Orissa...	1162
Central Provinces	4726
Assam	10

This annual grant is not to be expended except upon the relief of famine, or upon the construction of protective irrigation works or other works for the prevention of famine. Any portion of the grant which is not so spent is to be transferred to the Famine Insurance Fund. If this Fund exceeds six times the annual assignment, the latter might be temporarily suspended. This Fund could be further utilized for the grant of loans to the cultivators. It is to form part of the general balances of the Central Government who is to pay interest on it.

(66) LEGISLATIVE DEVOLUTION

In an earlier section we considered how control was exercised over provincial legislation. No legislative proposal could be introduced in a Provincial Council without the "previous sanction" of the Governor-General. This prevented the Councils from dealing with their peculiar social and local problems which vary in such a striking manner from province to province in India.

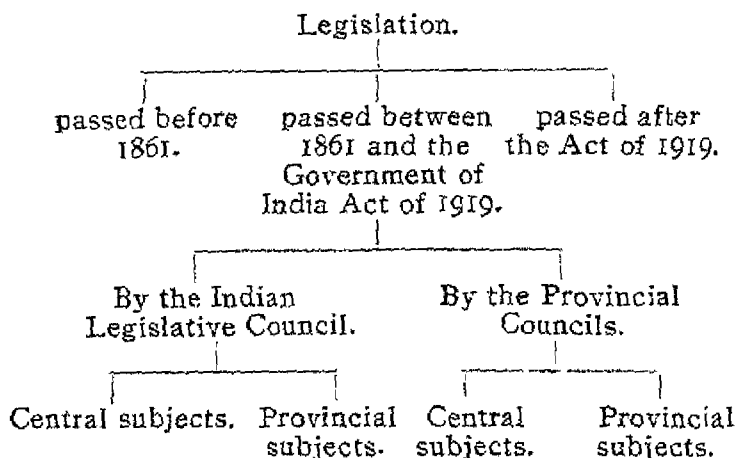
As a preliminary to the removal of the old restrictions, there was made a clear demarcation of powers between the Central and Provincial Legislatures closely following the division of subjects between the two authorities.

Section 80-A defines the powers of Local Legislative Councils. A Local Legislature of a

province may make laws for the "peace and good government" of the province. No previous sanction is required to legislate upon provincial subjects. It is required to make or take into consideration any laws mentioned in 80-A (3).

The problem of legislative devolution became difficult and complex because they had not a clean slate on which to write. A mass of legislation had been passed in the past by the Central and Provincial Councils on a variety of subjects ranging over the whole gamut from strictly parochial to Imperial matters.

We may classify that mass of legislation thus :



Now considering legislation from this chronological point of view, let us see how control over provincial legislation has been relaxed. 'Previous sanction' of the Governor-General is *not* required except in the following cases :—

(a) To make or take into consideration any laws mentioned in 80-A (3) of the Government of India Act.

(b) To repeal or alter laws passed before 1861 except those which the Governor-General in Council has by notification in the Gazette of India declared to require no previous sanction. (See Appendix C.)

(c) For repealing or altering laws passed between 1861-1919 which again have been mentioned in the published Schedule. If the provinces had been entirely free to make laws on subjects which though provincial had also an interprovincial or all-India aspect, the general framework of the laws of the country, as laid down in the Acts and Codes regulating commercial and business relations, might have been seriously changed and grave confusion might have ensued. It was to avoid this that important Acts of an interprovincial nature were included in a Schedule published in the Gazette of India. (See Appendix D.)

(d) Since 1919, (1) for legislating upon any Central subject, or (2) upon those Provincial subjects which are, in whole or part, "subject to Indian legislation."

An authentic copy of every Act to which the Governor has given his assent has to be sent to the Governor-General and the Act has no validity until the Governor-General has assented to it and that assent has been signified to and published by the Governor.

When the Governor-General withholds his assent from any such Act, he has to signify to the Governor in writing his reasons for so withholding his assent.

An authentic copy of every Act assented to by the Governor-General is to be sent to the Secretary of State and it is lawful for His Majesty in Council to signify his disallowance of the Act.

(67) ADMINISTRATIVE DEVOLUTION

Much need not be said about this process which is the necessary result of the greater powers in finance and legislation conferred upon the provinces. Numerous orders have been passed—mostly of a technical nature—which have the effect of ridding the Provincial Governments of control in administration.

CHAPTER XIV

DYARCHY

(68) DYARCHY IN THE PROVINCES

The provinces are the domain where the first substantial steps towards Responsible Government were to be taken. As Mr. Montagu said in the House of Commons: "The only possible way of achieving devolution and making the unit responsible for the management of its own affairs is to make the government of that unit responsible to the representatives of the people. Now in order to realize Responsible Government and in order to get devolution you must gradually get rid of Government by the Agents of Parliament and replace it by Government by the Agents of the representatives of the people. In other words you have to choose your unit of Government and you have got in that unit to create an electorate which will control the government. Now under present circumstances this unit cannot be the one for Local Self-Government...The Reforms of Lord Morley have emphasized the importance of the Provincial Councils and these latter have awakened the appetite for Responsible Government. We must, therefore, go to the provinces as the units of Responsible Government." In this form of Government, administration is carried on by Ministers. The Ministers must have the confidence of the representatives of the people in the Council. Their responsibility to the members of Council (and

through them to the electorates) consists in their being liable to be dismissed as soon as confidence in them disappears. In a Parliamentary constitution this responsibility can be enforced by various methods *e. g.* vote of censure, vote of non-confidence, reduction in the salaries of the Ministers, snap divisions, finally withholding of supplies.

Now though the idea of Responsible Government is quite familiar to the Western mind, it is an exotic in India. Hence it has to be introduced under special conditions. The Authors of the Reforms, therefore, took two precautions against possible dangers of trying this form of government: (1) In the first place they excluded altogether the Central Government from this experiment; and (2) even within a province, only a part of the administration was made responsible.

Meaning of Dyarchy.—The reasons that were alleged for this over-cautious policy were the backwardness of the people in education and the prevalence of religious or communal differences; at the same time substantial responsibility had to be given forthwith if the Reforms were to have any value. These conflicting objects were accomplished by the device of Dyarchy *i. e.*, by making a division of the functions of Provincial Government between those which are to be made over to popular control and those which for the present must continue to remain in official hands *i. e.*, between Transferred and Reserved subjects. The Governor-in-Council is in charge of the Reserved subjects, and the Governor acting with the Ministers of the Transferred subjects. The division of the sphere of Government between two authorities, one amenable to Parliament and the other responsible to the electorates is known as Dyarchy.

Division of Provincial Subjects into "Reserved" and "Transferred."—The guiding principle of this division as laid down in the Montford Report was this: "to include within transferred list those Departments which afford most opportunities for local knowledge and social service, those in which Indians have shown themselves to be keenly interested, those in which mistakes that may occur though serious would not be irremediable, and those which stand most in need of development. But Departments primarily concerned with law and order, and matters which vitally affect the well-being of the masses who may not be adequately represented in the new Councils, such as the question of land-revenue or tenant rights, should not be transferred."

Lists of provincial subjects for transfer were drawn up by the Functions Committee and after further examination were finally adopted. (See Appendix B)

(69) STRUCTURE OF THE PROVINCIAL EXECUTIVE

To turn now to the two halves of the Provincial Executive: the Governor-in-Council, and the Governor acting with his Ministers. There has been no change with regard to the former. The maximum of four Councillors under the old Act was retained; but the Joint Committee remarked: "In view of a large part of the administration being transferred to Ministers, the normal strength of an Executive Council, especially in the smaller provinces, need not exceed two Members, of whom only one need have been in the service of the Crown in India for at least twelve years, the other being, by convention, an Indian: but if, in any case, the Council includes two Members with service qualifications neither of whom is by birth an

Indian, it should also include two non-official Indian Members." The Executive Councillors are not responsible to the Provincial Legislature (in the sense that they could be removed from office by it). They are appointed by His Majesty; their pay is fixed by Schedule under the Act of 1919; their period of service is for five years. Thus neither their appointment, tenure of office, or pay depends upon the vote of the Council.

The administration of the Transferred Subjects was entrusted to Ministers who were to be nominated by the Governor from among the elected members of the Provincial Council and to hold office during his pleasure. Their salary is to depend upon the vote of Provincial Legislature.

As a matter of fact in the Provinces of Bengal, Bombay, and Madras four Executive Councillors and three Ministers, in Bihar and Orissa three Executive Councillors and two Ministers, and in the remaining provinces two Councillors and two Ministers were appointed.

Before the Reforms the whole administration was carried on, even in the larger provinces, by an Executive Council of three Members. It is true that the Reforms made the administration more complex. Also the protracted sessions of the Council and its thirst for information added to the work of the Executive. But even then it is generally felt that the administration has become top-heavy and expensive.

(70) GOVERNOR AND DYARCHY

We have next to consider how the Governor brings together the two halves of his Executive. That the problem was full of difficulties goes without

saying. It depended for its solution upon two axioms: (1) that the ordinary agency of administration will serve with equal loyalty and honesty the two halves of Government, and (2) that the Governor will be the link between the two halves. In fact the over-shadowing influence of the Governor over the two halves has been at once the cause of the success and failure of Dyarchy. Not only is he responsible for the distribution of Departments among his Councillors and Ministers, but he makes a number of "Rules for Executive Business" which are kept strictly confidential and which are equally binding upon both halves of Government. Again the permanent Heads of Departments—the various Secretaries—have direct access to the Governor, and they keep him closely informed of whatever is going on in each Department. It is by means of such 'unseen' strings that the Governor manages to yoke the Councillors and the Ministers to the chariot of provincial administration and to drive it.

But we shall explain some of the outward measures that have been prescribed for the Governor to keep the two halves together.

It should first be remembered that the two halves of Government are responsible to two different masters for two distinct fields of administration and the responsibility of each half for its own field is to be kept distinct. The people must not be kept in doubt as to what acts are done by the Governor on the advice of his Executive Council and what acts are done by him on the advice of his Ministers. Any confusion of responsibility would not only be unfair to the Councillors and the Ministers but it would prevent the electorates from judging about the acts

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or policy of their Ministers in the Council. Thus Responsible Government would lose its real educative value which consists in the ability to form accurate judgments about men and measures.

But in spite of this distinctness of responsibility, the two halves must have one policy. They should be brought together through the Governor. He is personally responsible for the proper administration of his entire province. He is the keystone of the arch of provincial Government. The Joint Committee thus envisaged his part in Dyarchy. The Committee were alive to the difficulties and dangers of "Dyarchy" but they saw no reasons why the relations of the two halves should not be harmonious and mutually advantageous. They regarded it as of the highest importance that the Governor should foster the habit of free consultation between both halves of his Government and indeed that he should insist upon it in all important matters of common concern. He will thus ensure that the Ministers will contribute their knowledge of the people's wishes and susceptibilities, and the Members of his Executive Council their administrative experience, to the joint wisdom of the administration. In another place of the Report the Committee gave a picture of the manner in which they thought that the Government of a province should be worked. "There will be many matters of administrative business, as in all countries, which can be disposed of departmentally. But there will remain a large category of business, of the character which would naturally be the subject of Cabinet consultation. In regard to this category the Committee conceive that the habit should be carefully fostered of joint deliberation between the Members of the

Executive Council and the Ministers, sitting under the chairmanship of the Governor. There cannot be too much mutual advice and consultation on such subjects." But this mutual consultation should not be allowed to obscure the responsibility of each half of Government for its own field of administration and it will be for the Governor to decide upon debatable questions of the jurisdiction of the two parts of administration.

(71) GOVERNOR AND MINISTERS

Under Dyarchy the administration of Transferred Subjects is left to the Governor acting with the Ministers. It is worth our while to examine more closely the relations of the Ministers with the Governor and the extensive powers with which the latter is armed to get over the difficulties of Dyarchy.

With regard to Transferred subjects he is much more than the mere constitutional head of that half of Government. It is he who appoints Ministers and they hold office during his pleasure. But the element of responsibility was introduced to this extent that the Ministers must be appointed from among the *elected* members of the Legislative Council and their pay depended upon the vote of the Council.

The Joint Parliamentary Committee laid down important principles to guide the Governor in the selection of Ministers and the extent to which he should support their acts or policies. Regarding the first point they said:

"The Committee are of opinion that the Ministers selected by the Governor to advise him on transferred subjects should be elected members of the Legislative Council, enjoying its confidence and capable of leading

it. A Governor will have the ordinary constitutional right of dismissing a Minister whose policy he believes to be either seriously at fault or out of accord with the views of the Legislative Council. In the last resort the Governor can always dissolve his Legislative Council and choose new Ministers afresh after a fresh election; but if this course is adopted the Committee hope that the Governor will find himself able to accept such views as his new Ministers may press upon him regarding the issue which forced the dissolution."

It will be observed that in the administration of the Transferred Subjects the Governor was expected to keep constantly before him the views of the Council and to regard the Ministers as agents for the carrying out of that will in practice. The Ministers were to be dismissed as soon as they lost the confidence of the Council. On the other hand the Governor was expected to yield if a new Council reaffirmed its confidence in the dismissed Ministers.

In the day-to-day administration of the Transferred Departments the Governor was expected to allow the views of the Ministers to prevail. As the Joint Committee said "Ministers who enjoy the confidence of a majority in their Legislative Council will be given the fullest opportunity of managing that field of Government which is entrusted to their care. In their work they will be assisted and guided by the Governor, who will accept their advice and promote their policy whenever possible. If he finds himself compelled to act against their advice, it will only be in circumstances roughly analogous to those in which he has to override his Executive Council—circumstances which will be indicated in the

Instrument of Instructions." The Instrument says "In considering a Minister's advice and deciding whether or not there is sufficient cause in any case to dissent from his opinion, you shall have due regard to his relations with the Legislative Council and to the wishes of the people of the Province as expressed by their representatives therein."

The Joint Committee anticipated that the Ministers would generally act together. The experience of Responsible Government in England pointed in the direction of the cabinet system. "It should be recognised from the commencement that Ministers may be expected to act in concert together. They probably would do so; and in the opinion of the Committee it is better that they should do so."

Two principles emerge from the foregoing views of the Joint Committee: that the Ministers should have the confidence of the majority in the Council and that they should act together. We shall see in the Chapter on the actual operation of the Reforms that the provincial Governors made extensive departures from both the principles and in doing so reduced Ministerial responsibility to a farce. He appointed Ministers who had not the confidence of the House and retained them when they had lost it. Sometimes he found it impossible to have any Ministers at all, on account of the attitude of obstruction and non-co operation on the part of some Councils. He was then called upon to exercise certain powers for the temporary administration of Transferred Subjects with which he was armed under the Act. The "Transferred Subjects (Temporary Administration) Rules" provide that in cases of emergency when owing to a vacancy there is no Minister in charge

of Transferred Subject, the Governor (a) shall, if another Minister is available and willing to take charge of the subject, appoint such Minister to administer the subject temporarily or, (b) may, if the vacancy cannot be provided for in the manner aforesaid, himself, temporarily administer the Subject. The Governor has to certify in writing that an emergency has arisen and forward a copy of the certificate to the Governor-General in Council for information. It is *temporary* administration in an *emergency* by the *Governor in person* that must be carefully noted. The Governor-in-Council has nothing to do with the Transferred Subject. Nor can he re-transfer Transferred Subjects to the Reserved category.

It will be observed that this is a temporary arrangement. If the Ministerial vacancy or vacancies are likely to last long Rules provide that "the Governor-General in Council, by notification in the *Gazette of India*, with the previous sanction of the Secretary of State in Council, revoke or suspend for such period as he may consider necessary the transfer of any provincial subject in any province, and upon such revocation, or during such suspension, the subject shall not be a Transferred Subject." The re-transfer of a Transferred Subject to the Reserved half is a confession of the failure of Dyarchy.

(72) POWERS OF THE GOVERNOR WITH REGARD TO THE DIFFICULTIES OF DYARCHY

Seeing that the Governor is the pivot of Dyarchy we shall now proceed to consider the special powers with which he has been invested to enable him

to discharge his responsibilities both with regard to the Reserved and Transferred Subjects.

1. Power to define spheres of jurisdiction.—An initial difficulty will be about the jurisdiction of the two halves of Government. Though careful lists of Reserved and Transferred Subjects were drawn up, it was not always clear whether a particular question belonged to one or the other half of Government. "It will not, however, always be clear otherwise than in a purely departmental and technical fashion, with whom the jurisdiction lies in the case of questions of common interest. In such cases it will be inevitable for the Governor to occupy the position of an informal arbitrator between the two parts of his administration, and it will equally be his duty to see that a decision arrived at on one side of his government is followed up by such consequential action on the other side as may be necessary to make the policy effective and homogeneous."

Devolution Rule 9 accordingly provides that in the case of disagreement between the Executive Councillors and Ministers regarding jurisdiction, "it shall be the duty of the Governor, after the consideration of the advice tendered to him, to direct in which Department the decision as to such action shall be taken; provided that, in so far as circumstances permit important matters on which there is such a difference of opinion, be considered by the Governor with his Executive Council and his Ministers sitting together."

2. Power to allocate Funds to the two Halves.—To turn next to his financial responsibility, in connection with both subjects. This is the problem of allocation of funds between the two halves. The Reserved

subjects, vitally concerned with the peace and tranquillity of the province, must be guaranteed sufficient revenue for efficient administration and this in spite of the possible opposition of the Ministers. On the other hand, the Transferred Departments of Education, Sanitation, etc. crying for and capable of almost unlimited improvement must not be starved on the specious plea of the more pressing needs of the Reserved Subjects. Such is the problem before the Governor.

The Montagu-Chelmsford Report proposed that the allocation of funds between the two halves should be considered by the Government as a whole; provincial contributions and Interest (which are a first charge upon provincial revenue) having been provided for, the supply of the Reserved Subjects should have a priority; then the needs of the Transferred Subjects should be taken into account; and if funds be insufficient, the Ministers and they alone should face the Council with proposals of fresh taxation.

Thus though the M. C. Report favoured a "Joint Purse" for the province, it sacrificed the Transferred Subjects which were made to remain satisfied with what was left after the Reserved Subjects had had their fill; and it cast upon the Ministers the disagreeable necessity of proposing additional taxation. The Government of India, in their celebrated Despatch of 5th March 1919, proposed a "Separate Purse" for each half of Government. In addition to the defects mentioned above, they argued that, (a) under the Joint Purse it was not impossible for Ministers to starve the Reserved Subjects by refusing fresh taxation, and by insisting upon a certain revenue for their own departments; (b) the Joint Purse had the incurable

fault of being impracticable. It would cause endless friction in the division of the provincial balances and of the proceeds of fresh taxation, in the raising of loans, and in paying interest for them; (c) further the Joint Purse would not give any incentive to either half to improve its resources. Under the pooling system, any improvement which either half of Government can effect goes into hotchpot, and there is no direct advantage from it, possibly no advantage at all.

The rival scheme of "Separate Purse" proposed by the Government of India pre-supposed a complete separation between the resources of the two halves of Government, each having its own balances, revenues, powers of taxation and of borrowing, and a separate budget. It was claimed to be free from the defects of the Joint Purse: but its greatest merit was said to be that it would remove the "official" Government from the undue influence and control of the Ministers, by depriving the latter of any opportunity to meddle with the "budget" of the Reserved half. Lord Meston—the then Finance Member of the Government of India—argued that the success of the new experiment of Dyarchy required that each half of government should have its own work and should be allowed to do it unfettered by control exercised by the other half; and the contention of the Government of India was that the Joint Purse would place in the hands of the popular half of Government, through their handling of the purse-strings, a very large measure of control over the policy in regard to subjects which were not under their administrative control and consequently for which they were not responsible. It was feared that if at the time of the preparation of the Budget, there

was no automatic barrier between the two classes of revenue like the one which the Separate Purse provided, the popular half would encroach upon the revenues of the other and that the Governor would not be able to prevent this encroachment.

Such were the arguments for and against the Joint Purse brought forward by the Government of India. Now it became sufficiently clear in the course of the controversy that some scheme of allocation of revenues between the two halves of Government had to be made. As the division between the "Reserved" and "Transferred" Subjects was not made on fiscal considerations, the assignment of the revenues accruing under Reserved Subjects to the Reserved half, and under Transferred Subjects to the Transferred half was absurd. The Transferred Subjects in any case required to be subsidized by the Reserved Subjects. Thus the real issue between the Joint and the Separate Purse did not at all turn upon financial grounds: The problem of distributing a limited revenue between various items of expenditure of more or less urgency and usefulness has to be solved by all governments, as it has to be solved by all private individuals also. A reasonable man so distributes his income as to get the maximum benefit out of each item of expenditure; and given reasonable Councillors, reasonable Ministers and a reasonable Governor, it was difficult to see why the Joint Purse should prove unworkable.

Dictum of the Joint Committee.—Such was the view taken by the Joint Committee. They said that they had given much attention to the difficult question of the principle on which the provincial revenues and balances should be distributed between the two

halves of Government. "They are confident that the problem can readily be solved by the simple process of common sense and reasonable give and take, but they are aware that this question might, in certain circumstances, become the cause of much friction in the provincial government, and they are of opinion that the rules governing allocation of these revenues and balances should be so framed as to make the existence of this friction impossible. They advise that if the Governor, in the course of preparing either his first or any subsequent budget, finds that there is likely to be serious or protracted difference of opinion between the Executive Council and his Ministers on this subject, he should be empowered at once to make an allocation of revenues and balances between the Reserved and Transferred Subjects which should continue for at least the whole life of the existing Legislative Council. The Committee do not endorse the suggestion that certain sources of revenue should be allocated to Reserved, and certain sources to Transferred Subjects, but they recommend that the Governor should allocate a definite proportion, say by way of illustration, two-thirds to Reserved and one-third to Transferred Subjects, and similarly a proportionate though not necessarily the same fraction of the balances. If the Governor desires assistance in making the allocation, he should be allowed, at his discretion, to refer the question to be decided to such authority as the Governor-General shall appoint. Further the Committee are of opinion that it should be laid down from the first that, until an allocation has been made by the Governor, the total provisions of the different expenditure heads in the budget of the

province for the preceding financial year shall hold good."

Devolution Rules about Allocation of Funds.—Effect has been given to this dictum of the Joint Committee by Devolution Rules made under the Act which are to the following effect. They first lay down that "expenditure for the purpose of the administration of both Reserved and Transferred Subjects shall be a charge on the general revenues and balances of the province"; that their distribution between Reserved and Transferred Subjects shall "be a matter for agreement" between the two halves; that the Governor, if he is satisfied that there is no hope of agreement between the two halves within a reasonable time, may, "by order in writing make the allocation by specifying the fractional proportions of the revenues and balances to be assigned to each half; that the Governor may refer the matter to an authority to be appointed by the Governor-General in this behalf on the application of the Governor; every such order to remain in force for a period specified in the order (which will not be less than the duration of the then existing Council, and not exceed by more than one year, its duration;)" that if an increase of revenues accrue during the period of the order on account of the imposition of fresh taxation, that increase, unless the Legislature otherwise directs, shall be allotted to that part of Government by which the taxation is initiated. Regarding proposals of borrowing or taxation, they will be considered "by both halves or Government sitting together"; but the decision shall thereafter be arrived at by the Governor-in-Council, or by the Governor and Ministers, according as the proposal originated with the former or the latter.

Every contingency has thus been provided for. When the two halves of Government fail to agree and when the Governor also has failed to allot the moneys the budget is to be prepared on the basis of the budget of the year about to expire and under no circumstances will the wheels of administration be brought to a standstill because of difficulties in the allocation of funds.

Advantages of the Joint Purse.—Sir Sankaran Nair (who was a member of the Executive Council of the Governor-General when the Reforms were being shaped) was from the first a great opponent of the Separate Purse and an advocate of the Joint Purse. The former, he said, by depriving the popular half of any real voice in the settlement of the budget as a whole would substantially reduce the value of the Reforms. The Joint Purse, on the other hand, would minimize the drawbacks of the dual system of Government introduced in the province, and give both halves of Government opportunities of sympathetically influencing each other's discussions to the advantage of both, and of the people of the province. The Governor too will be in a better position to discharge his duties as head of the whole Government and promote friendly relations between the two halves. The knowledge that Ministers with their responsibility for Transferred Subjects have also been a party to the allotments made for Reserved Subjects is calculated to induce in the Legislative Council a conviction of the necessity of those allotments and to minimize the chances of their seeking to cut them down. This will be of great moral value as it will curtail the necessity of the Governor's making use of his power of certification which cannot but cause friction and

conflict between him and his Executive Council on the one hand and the Ministers and the Legislative Council on the other. The financial disposition of each year can be made with reference to the particular requirements of that year, there will be a much-needed and most useful element of elasticity imparted to the financial arrangements, and when a proposal of fresh taxation is made in the Council in these circumstances, the Legislative Council will easily persuade itself to accept it and support Government than it can be expected to do under a system of the "Separate Purse."

But the Devolution Rules seriously detracted from the advantages of the Joint Purse by keeping the portfolio of Finance in the hands of a Member of the Executive Council. The Ministers thus had to look up to him and his Department for all schemes of expenditure. In the financial powerlessness of the Ministers is to be found the chief cause of the failure of Dyarchy.

(3) *His Duty to the Public Services.*—But the difficulties of Dyarchy are not confined only to the hybrid Cabinet. The position of the Public Services has been profoundly altered under the Reforms. So far as the Transferred Departments are concerned the Services (*a*) must serve under Indian Ministers, and (*b*) instead of initiating policies, must carry out the policies of the Ministers and the Council. Many members of the Services looked with disfavour upon the Reforms not only because their personal position and prospects were adversely affected by them, but also because they doubted the wisdom of the change. The duty of keeping the servants satisfied has been cast upon the Governor. "The

(Joint) Committee think that every precaution should be taken to secure to the public servants the career in life to which they looked forward when they were recruited. If friction occurs, a readjustment of persons and places may often get over the difficulty, and the Governor must always regard it as one of his most important duties to establish a complete understanding between his Ministers and the Officers through whom they will have to work."

Section 96-B of the Act and Rules made thereunder safeguard the interests of public servants. Servants appointed by the Secretary of State who do not get satisfactory redress of their grievances from their official superiors are to complain to the Governor and obtain justice. Again, no order adversely affecting the emoluments or pensions, no order of formal censure, or of effecting the transfer of officers can be passed without the personal concurrence of the Governor. The Instrument of Instruction issued to the Governor upon his appointment emphasizes his duties in this connection.

It happened, however, that even in spite of all these precautionary measures, many public servants could not continue their service under the changed environment of the Reforms. They were allowed to retire prematurely from the service on a proportionate pension. On the other hand the Ministers complained of their absolute lack of voice in the appointment of or control over their servants in the Transferred Departments. The whole position was carefully considered by the Lee Commission whose Report will be considered in connection with the criticism of Dyarchy. Powers of the Governor in connection with the Budget and Legislation will be considered

in the next chapter dealing with the Provincial Councils.

Instrument of Instructions to the Governor.—The responsibilities of the Governor with regard to Dyarchy and his overshadowing influence are well brought out in the Instrument of Instructions with which he is furnished on his appointment as Governor.

In a general way he is called upon 'to further the purposes of the Government of India Act 1919 to the end that the institutions and methods of Government therein provided shall be laid upon the best and surest foundations, that the people of the Province shall acquire such habits of political action and respect such conventions as will best and soonest fit them for Self-Government'.

He is next exhorted to maintain standards of good administration, to encourage religious toleration, co-operation among all classes and creeds, to ensure the probity of public finance and solvency of the Province; to keep clear and distinct the responsibility of each half of Government for its proper sphere; to encourage the habit of joint deliberation between them; to assist Ministers in the administration of Transferred Subjects and advise them in regard to their relations with the Legislative Council; in considering a Minister's advice and deciding whether or not there is sufficient cause in any case to dissent from his opinion, to have due regard to his relations with the Legislative Council and to the wishes of the people of the Province as expressed by their representatives therein.

In addition to these general instructions the Governor is specially required to see (a) that necessary measures are taken for maintaining safety and

tranquillity of all parts of the Province; (b) that due provision is made for the advancement and social welfare of small or backward or ill-organized Communities; (c) that all members of the Services are safeguarded in the legitimate exercise of their functions and in the enjoyment of all recognized rights and privileges; and (d) that no monopoly or special privilege which is against the common interest, is established and no unfair discrimination is made in matters affecting commercial or industrial interests in the Province.

(73) CONTROL OF THE SECRETARY OF STATE AND THE GOVERNOR-GENERAL IN COUNCIL OVER THE PROVINCIAL GOVERNMENT

We saw in the last Section how the Governor was armed with extensive power to carry on administration under Dyarchy. Further restrictions upon the powers of the popular half of Government resulted from the control which the Governor-General in Council and the Secretary of State continued to exercise over the Provincial Governments in spite of the devolution of greater authority upon the latter. We have already considered the rules regarding 'previous sanction' for legislation in the Provincial Councils; reference has also been made to the restrictions upon the financial powers of the provinces. Here we are concerned with the restrictions imposed upon provincial expenditure. Though the control of the Provincial Councils over the expenditure has been augmented official control is still there. We may consider official control under the following heads:—

- (a) Control by the Secretary of State in Council and the Governor-General in Council.

(b) Control by the Finance Department.

(c) Control by the Audit Department.

(a) *Control by the Secretary of State in Council.*—

This control will vary according as the subject is Transferred or Reserved. Regarding expenditure over Reserved Subjects, the Joint Committee thought it unnecessary and undesirable to prescribe by statutory Rules under the Act of 1919 the extent to which the Secretary of State in Council was to delegate his powers of control to the Provincial Government. But in purely Provincial matters where the Provincial Government and Legislature were in agreement regarding the desirability of incurring expenditure on them he may allow the Governor in Council to dispense with his previous sanction if he so desires. But all such delegation must be by executive orders of the State Secretary and not by Rules under the Act.

It is otherwise with regard to the Transferred Subjects. In connection with them the Joint Committee rightly drew attention to the intention of the Act of 1919 that such expenditure should be, with the narrowest possible reservations, left within the exclusive control of the Provincial Legislature. But though the widest freedom is desirable the Secretary of State in Council must have some control over expenditure on Transferred Subjects. The occasions for control are defined in Devolution Rule 27. The Governor-General in Council has no independent powers of control now left to him. This is particularly true of Transferred Subjects. Regarding Reserved Subjects, all applications for the previous sanction of the Secretary of State in Council are in the first instance to be made to the Governor-General in Council who may either agree with them or disagree

with them. In all cases the provincial applications have to be forwarded to the Secretary of State in Council.

The result of Rules framed with regard to expenditure on provincial Reserved and Transferred Subjects is briefly this:—

Previous sanction of the Secretary of State is necessary, in Reserved Subjects, for (a) the creation or abolition of a post ordinarily belonging to the All-India Services; (b) to the creation of permanent posts with a salary exceeding Rs. 1,200 p.m. and (c) temporary posts with salary exceeding Rs. 4,000 p.m. (d) the granting of pensions, annuities etc., to deceased servants of Government, under certain circumstances; (e) to incurring expenditure upon public works affecting the interests of more than one province, or costing more than 50 lacs of Rupees; (f) to the revision of a permanent establishment costing five lacs of rupees a year and other minor items.

The rules regarding the Transferred Subjects are of the same tenor and in addition have reference to expenditure on the purchase of imported stores or stationery.

(b) Official control exercised through the *Finance Department* must be next considered. The Finance Department has extensive powers of advice and control in all matters bearing upon provincial finance. It is in the hands of a Member of the Executive Council. Its functions have been thus enumerated by Devolution Rule 37. It is (a) to be in charge of the account relating to loans granted to the Local Governments, and advise on the financial aspects of all transactions relating to such loans; (b) to be responsible for the safety and proper employment of the Famine

Insurance Fund; (c) to examine and report upon all proposals for the increase or reduction of taxation, and (d) of borrowing; (e) to be responsible for seeing that proper financial rules are framed for the guidance of other Departments and that suitable accounts are maintained by them; (f) to prepare an estimate of the total receipts and disbursements of the Province; (g) to assist in the preparation of the Budget; (h) on the receipt of a report from the Audit Officer to the effect that expenditure is being incurred for which there is no or insufficient sanction, to take steps to obtain sanction or to immediately stop the expenditure; (i) to lay the Audit and Appropriation Reports before the Committee on Public Accounts; (j) to advise Departments responsible for collection of revenue regarding the methods of collection.

(c) An effective and independent control by the *Audit Department* has been secured by making the latter a Central Subject, and thus outside the purview of the Provincial Government altogether.

Control over Administration.—Though superior official control has been considerably relaxed it can not be altogether eliminated. The Provinces cannot be made independent of the Government of India so long as the latter is held responsible to Parliament for the whole of India. The control of the Secretary of State therefore, must continue, though to a defined and diminished extent. The Joint Committee came to the conclusion that "there was no necessity of disturbing the then existing state of relations, except to the extent to which the Secretary of State relaxes his powers of direction and control over Local Governments. To that extent the Government of India also will withdraw from intervention; but India is not yet

ripe for a true federal system and the Central Government cannot be relegated to the functions of mere inspection and advice. The Committee trust that there will be an extensive delegation, statutory and otherwise, to Provincial Governments of some powers and duties now in the hands of the Government of India; and they trust also that the control of that Government over provincial matters will be exercised with a view to preparing the provinces for the gradual transfer of power to the Provincial Government and Legislature."

Now having regard to the circumstance that provincial matters will be henceforward of two kinds—Reserved and Transferred—it is necessary to examine further the purposes for which the Central Government might interfere with them, for it is evident that the occasion and extent of intervention must depend upon whether the particular subject was Reserved or Transferred.

In the case of Transferred Subjects, Government of India and the Secretary of State can interfere only for specific purposes. Thus Devolution Rule 49 lays down "The powers of superintendence, direction, and control over the Local Government of a Governor's province, vested in the Governor-General in Council under the Act shall, in relation to Transferred Subjects, be exercised only for the following purposes :—

- (1) To safeguard the administration of Central Subjects.
- (2) To decide questions arising between two provinces, in cases where the provinces concerned fail to arrive at any agreement.

- (3) To safeguard the due exercise and performance of certain powers and duties imposed upon the Governor-General in Council by the Act, or by Rules made thereunder.

The case for Reserved Subjects is not so simple. Here the intervention cannot be limited to specified occasions. The general principle is "that an official Provincial Government must remain amenable to the Government of India, the Secretary of State and Parliament in matters in which it is not amenable to the Local Legislature." The Joint Committee accordingly laid down: "The relations of the Secretary of State and of the Government of India with Provincial Governments should, in the Committee's judgment, be regulated by similar principles, so far as the Reserved Subjects are concerned. It follows, therefore, that in purely provincial matters which are reserved, where the Provincial Government and Legislature are in agreement, their view should ordinarily be allowed to prevail, though it is necessary to bear in mind the fact that some Reserved Subjects do cover matters in which the Central Government is closely concerned." Commenting upon the Rules made to give effect to this principle, the Joint Committee say: "The Committee consider that no statutory divestment of control except over the Transferred field, is either necessary or desirable. It is open to the Secretary of State to entrust large powers, administrative and financial, to the Governor-General in Council and the Provincial Governors in Council; and he will no doubt be largely influenced in deciding whether or not to require reference to himself in any given case or whether to interpose his orders where reference has been made

by the attitude of provincial public opinion as expressed in the Provincial Legislative Council. But these matters cannot be regulated by statutory rules and any authority which the Secretary of State may decide to pass on to the official Government in India will be a mere delegation of his own authority and responsibility, for the discharge of which in relation to the Central and Reserved Subjects he must remain accountable to Parliament."

With regard both to Transferred and Reserved Subjects the Provincial Governments must supply information and returns in the form required by the Central Government.

CHAPTER XV

REFORMED PROVINCIAL COUNCILS

(74) THEIR CONSTITUTION

The underlying principle of the Morley-Minto Reforms was that of greater *association* of the people with the discussion and decision of public questions *e. g.*, in the Legislative Councils. But the Councils though they exercised influence over the administration did not in the least control it, for the latter continued to remain essentially responsible to Parliament. Lord Morley expressly repudiated that his Reforms were a step towards Responsible Government. But the principle of "Association" has its limits which were nearly reached under the Morley-Minto Reforms. Association is merely a means to an end and as such is incapable of becoming the goal of political ambition. That goal is Responsible Government and Association was a period of probation for it.

Now the grant of a substantial instalment of Responsible Government in the Provinces being the cardinal feature of the Montford Scheme, the Legislative Councils had to be reformed—both with regard to their Constitution and Functions—in conformity with that principle. Bearing upon the change in their constitution the M. C. Report laid down the following comprehensive formula "We propose that there shall be an *enlarged*

Legislative Council, differing in size and composition from Province to Province, with a *substantial elective* majority, elected by *direct* election, on a *broad* franchise, with such *Communal* and *Special* representation as may be necessary." What we have now to do is to show how the vital questions here so briefly mentioned have been dealt with in the Act or by the Rules framed under it.

(1) *Numbers.* Even the maximum strength under the old Rules (50 in the major Provinces) was very small, considering the extent and population of the provinces. In many provinces the actual numbers fell far short of the statutory maximum. The maximum had to be low, as a substantial proportion of the members consisted of officials, and the number of officials that could be withdrawn, for the purposes of the Councils, from the administration without serious inconvenience to it became the upward limit to which or about which non-officials could be "added" to the Councils.

But such a requirement of official strength or majority is inconsistent with the Reforms. A few officials—in addition to the Executive Councillors who are *ex-officio* members, might be appointed but their *raison-de-tre* is not the furnishing Government with official votes but rather the stabilizing influence which they will bring to bear upon the debates in the Council on account of their first-hand and living touch with administration. As for non-official representation, the guiding principle was that all interests and communities should have a fair and equal chance. Nor should the Councils be, on the other hand, unmanageably large. The minimum as laid down in

the Act is given in the Table. It will be seen that as the Morley-Minto Act prescribed a minimum strength of the Councils, it was possible to have the Executive to have fewer members than the Council. The Act of 1919, however, prescribes a minimum strength by the Rules made under this Act, it will be seen that in each province there are more members than the Statutory minimum.

The Composition of each Council established under the Act of 1919.

PROVINCE.	Total (Ex-officio,) (nominated and elected.)	Nominated.			Total (elected.)	By Statute.
		Total (Nominated and Ex-officio)*	Officials (Nominated and Ex-officio.)	Non-Officials.		Total.
1. Madras ...	127	29	23	6	98	13
2. Bombay ..	111	25	20	5	86	11
3. Bengal ...	†139	26	20	6	†113	†21
4. United Provinces ...	123	23	18	5	100	10
5. Punjab ...	93	22	16	6	71	7
6. Bihar and Orissa ...	103	27	20	7	76	9
7. Central Provinces ...	†70	16	10	6	54	7
8. Assam ...	53	14	9	5	39	6

made is shown in the following Table.

Elected.										REMARKS.
General Electorates					By General Electorates.					
Mahomedans (Urban)					Total.	(Rural)	(Urban)	Minimum under the Act of 1919.		
	Europeans.	Anglo-Indians.	Indian Christians	Sikhs.		Non-Mahomedans	Non-Mahomedans			
2	1	1	5	...	65	56	9	118	* This column	
5	2	..	..	...	46	35	11	111	shows the maxi-
6	5	2	...	...	46	35	11	125	mum number of
4	1	...	..	..	60	52	8	118	officials who may
5	...	..	...	12	20	13	7	83	be nominated
3	1	...	...	.	48	42	6	98	under the rules.
1	...	...	...	...	40	31	9	70	It is open to the
...	...	..	...	...	21	20	1	53	Governor to
									nominate fewer	
									officials with	
									a corresponding	
									increase in the	

nominated non-officials shown in the next column.

There will later be an additional elected seat for the Dacca with consequent increases of one in the figures shown in the next column. This has taken place.

Members to be nominated as the result of elections held in Berar shown as elected. *Vide* sect 72 (2) (c) of the Act.

The seat (Shillong) is filled by a general electorate including all, there being no separate Mahomedan Urban constituency.

(2) *Proportion of officials and non-officials.*—In an earlier section we considered the theory of official voting. In the old Provincial Councils, the officials were not in a majority, for it was felt that there were sufficient safeguards against non-official opposition. No non-official could introduce a private Bill without "previous sanction." Non-official opposition to a Bill proposed by Government could be got over by getting the Bill passed in the Legislative Council of the Governor-General which had concurrent powers of legislation where an official majority was always handy; and as regards Resolutions, even if non-officials succeeded in carrying one in the teeth of Government opposition—which was not a rare phenomenon—the Resolution was of a purely recommendatory character. As regards the Budget the powers of the Local Council were more illusory than real. Thus, as in any case, the powers of the Councils were nominal and limited, a non-official majority in them did not matter much. But though an official majority was unnecessary, an official *bloc* was felt to be indispensable. The officials had freedom neither of speech nor of vote, and the non-officials were irritated by their apparently meaningless opposition which widened the cleavage between the Government and the people. Again though the non-officials were in a majority, their influence was compromised by certain factors. A non-official majority was not the same thing as an elective majority. The former contained nominated European and Indian non-officials most of whom voted with Government. Thus the non-official majorities proved largely illusory and the unreality of the Councils caused disappointment and dissatisfaction.

In the new Councils "not more than 20 per cent.

of the members can be officials and at least 70 per cent. must be elected members."

It will be seen that the power of the Governor to nominate non-officials is restricted to only 10 per cent. of the total strength. Out of these he must nominate some to represent interests of classes mentioned in the Rules under the Act. Thus in the case of the Bombay Council the Governor is required to nominate members to represent the Anglo-Indian Community, the Indian Christian Community, the labouring classes in Bombay, the Depressed Classes, and the Cotton trade in Bombay. He has full discretion only as regards the remaining five members.

In addition to the nominated officials and non-officials, the Governor has the right of nominating one or two persons "having special knowledge or experience of the subject matter of a Bill which has been introduced into the Council, as expert members."

(3) *Method of Appointment.*—We considered in an earlier section the defects of the state of representation before the Reforms. In the first place the electorate was very restricted and secondly as the election was indirect there was no real connection between the primary voter and his representative in the Council. This lack of connection deprived the franchise of its political value and educative influence and left no room for the principle of Responsible Government.

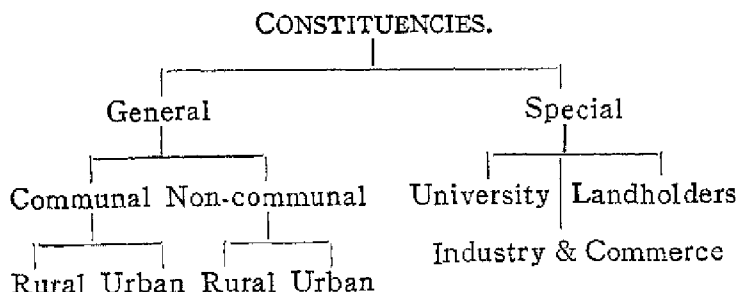
But as it is upon this principle that the whole edifice of Provincial Government is raised, its proper application requires direct election and low franchise. In framing the constituencies and defining the franchise, however, we must remember that about 90 per cent. of the population is illiterate and rural in its

habits; that education is unequally distributed among various communities, is too much literary, and imparted in an unsatisfactory manner; further, as the authors of the M. C. Report say, "the politically-minded educated Indians, though they have done a great deal for the political and social improvement of the masses, have not yet identified their interests with those of the masses. Nor can we be blind to the division of Indian society by races, creeds, and castes. In spite of these real difficulties, however, the experiment of responsible government must be tried. It will be agreed that the character of political institutions reacts upon the character of the people. This fact, that the exercise of responsibility calls forth the capacity for it is the best ground for confidence in the working of Self-Government in India."*

The detailed work of defining constituencies and franchise was done by the Franchise Committee of Lord Southborough. For purposes of "rural" representation it took the District as a convenient unit each sending one or more members according to its size or population. The larger and more industrialized towns were given "urban" representation. This distinction between rural and urban constituencies was unknown in the old Councils. But towns are assuming a new importance in India. As the Government of India said in their Despatch "After religion and race, the boundary between the town and the country is the greatest dividing line that runs through the Indian people. It corresponds closely with the division between progress and conservatism, between English education and Vernacular; between experience of Self-Government and lack of such experience;

between the existence of newspapers, professions, bar-libraries, and societies, and their absence. It is roughly the difference between the old India and the new, the forces that are forcing us forward and the forces that are holding us back."

But uniform constituencies based upon territory though well-suited to politically advanced countries like England or the United States, are unsuited to Indian conditions. They have been supplemented by constituencies designed to represent particular communities, or special interests *e.g.*, the Universities, European and Indian Commerce, and Land-holders. We may classify the constituencies thus:



Disputable Matters of Representation.—Thus the problem of the representation of the Indian population is one of peculiar complexity. The Joint Committee laid down important principles in this respect in connection with their comments upon Section 72A (4) (c). We shall take them in order, and first, *Communal Representation.*—So far as the Mahomedans were concerned their claim for separate representation was beyond revocation, as they were in enjoyment of that privilege in the old Councils. The non-Mahomedans—particularly the Hindus, in their turn, had not only acquiesced in that concession but solemnly given

their approval by what is known as the Lucknow Compact'' of 1916. By this agreement the Mahomedans were allowed to have Mahomedan Members equal to fifty per cent. of the total elected Indian Members in the Punjab, thirty per cent. in the United Provinces, forty per cent. in Bengal, twenty-five per cent. in Bihar and Orissa, fifteen per cent. in the Central Provinces, fifteen per cent. in Madras, and thirty-three per cent. in Bombay.

This Lucknow Compact was taken by the Franchise Committee as the basis for determining the number of Mahomedan seats in each Provincial Council.

It was not thought wise to go behind the Lucknow Compact which was taken as a proof of the growing understanding between the two great communities of Indian society.

Considering the question of Communal Representation on its merits, we may say that its advantages are the following :—

It better protects the interests of the particular community; secures better representation of that community; it welds the community more closely; and affords it greater opportunities of education and service.

On the other hand there are grave disadvantages. As the M. C. Report pointed out, Communal Representation will not carry India towards Responsible Government. (1) It is opposed to the teaching of the history of all self-governing countries which shows that in each the territorial principle has vanquished the tribal, and blood and religion have ceased to assert a rival claim with the State to a citizen's allegiance. (2) Again, communal representation perpetuates class divisions and thus retards the

growth of that citizen-spirit which is superior to the partisan spirit of a narrow community or religion. (3) A minority which is given special representation owing to its weakness and backwardness is positively encouraged to settle down into a feeling of satisfied curiosity, it is under no inducement to educate and qualify itself to make good the ground which it has lost compared with the stronger majority. On the other hand the latter will be tempted to feel that they have done all that they need do for their weaker fellow-countrymen and that they are free to use their power for their own purpose. The give and take which is the essence of political life is lacking.”*

Some other disadvantages might be here pointed out. (4) The concession is contagious. It is impossible to stop when once you give concession to one community, before giving it, in fairness, to all. (5) Many communities in India are not homogeneous. There are divisions and sub-divisions and communal representation would accentuate this fissiparous tendency. (6) Again, in India communal representation may be viewed with intense suspicion as a Machiavellian device to widen existing lines of cleavage, to check the growing sense of nationality and to secure the position of the British Government by the application of the principle of “divide and rule.” (7) A separate representation given to the less progressive communities is certain to affect the calibre of the Councils during the period of transition.

In spite of these drawbacks this concession has been continued to the Mahomedans in all provinces, and conferred afresh on the Sikhs in the Punjab, the Indian Christians in South India, and the Europeans

in Madras Bombay and Bengal. It was no doubt an irony of fate that the publication of the M. C. Report with its strong presentation of the case against communal representation should have witnessed the recrudescence of the communal feeling with a strength and sharpness that were impatient of reasoning and that succeeded in gaining the concessions mentioned above.

A less objectionable method of securing the representation of minorities is that of *Reservation of Seats* in plural-member constituencies. The superiority of the device of reservation to communal representation is this that it does not deepen existing differences, it admirably secures the object which it has in view, it is simpler in operation, and it is a concession that can be revoked with greater ease and facility than communal representation when it has done its work. It is by this means that the Non-Brahmins in the Madras Presidency and the Marathas in the Deccan have been represented in the Local Councils. So far as the Deccan Marathas were concerned 6 seats were reserved for them in each of the plural-member constituencies of Bombay (South), Thana, Ahmednagar, Nasik, Poona and Ratnagiri Districts. The Sholapur, Kolaba and the West Khandesh District is to elect a Maratha member to the first, second, and third Councils respectively and to succeeding Councils in the same rotation. It was not felt necessary to reserve a seat in the Satara District because it was thought that the Maratha element in it was sufficiently strong to return a Maratha to the Council with certainty. Both the communities had pressed their claims for separate representation before the Franchise Committee but their claims were not favourably

entertained. The Non-Brahmins in Madras are in an overwhelming majority in that province, though backward in education. Experience has shown that the Non-Brahmins can organize themselves well for entry into the Councils. In the Madras Council they are in a majority and in the Bombay Council the Marathas form an important group.

Representation of Special Interests.—Next to the problem of communal representation comes the one of the representation of Special Interests. Here the qualification is based not on the elector's belonging to a particular community in a town or district, but rather upon his representing a special interest *i. e.*, of the Landholders, of a University or of Industry and Commerce. Such special electorates are non-territorial in their nature and the vote or votes thus exercised are in addition to that based upon the territorial qualification.

The Landholders—the historic aristocracy of the country—had special representation in the old Councils and they are sufficiently distinct from the vast mass of cultivators who are either their tenants or peasant proprietors. In the Bombay Presidency the Gujarat Sardars and Inamdars, the Deccan Sardars and Inamdars, and the Sind Jagirdars and Zamindars—paying not less than Rs. 1000 per year by way of land revenue, are given one member each in the Legislative Council.

The Universities also, on the analogy of the Universities of Oxford and Cambridge, enjoyed special representation in the old Councils. They safeguard the interests—not of the educated classes—but of University Corporations. The franchise extends to all

graduates of the University of more than seven years standing.

Indian and European commercial and industrial interests have been given special representation, *e.g.*, the Planting interest in Madras, Bihar-Orissa and Assam; Mining interest in Bengal, Bihar-Orissa and the Central Provinces; European Chambers of Commerce in Bombay, Bengal, Madras, and the United Provinces; Indian Chambers of Commerce in Bombay, Bengal, and Madras; Mill Owners' Association in Bombay, etc.

Nomination.—But there are sections of Indian population to whom the devices of communal representation, of reservation of seats, or special representation cannot be conveniently applied. In such cases nomination pure and simple was found most suitable. It is even simpler and more elastic than reservation. There are minorities which are too small or unorganized to be protected by a seat being reserved for them but which are sufficiently important to have their claims acknowledged. Nomination serves the purpose well in such cases. Rules under the Act require the Governor of each Province to secure the representation of certain interests or communities by this method of nomination; for example the Depressed Classes in many provinces; Anglo-Indians; Indian Christians; similarly the Cotton trade in Bombay; "excluded tracts" in Madras, Central Provinces and Assam; and the wage-earners in the city of Bombay.

The case of the Wage-earners is specially interesting. They are sufficiently important and organized in Bombay for instance. But the Joint Committee felt that election would not secure for

Labour the best and most useful representative that was available. They, therefore, went in for nomination rather than election.

At the same time it must be admitted that the position of the Nominated members in the Councils is far from enviable. They are viewed with suspicion both by Government and by the elected members. Perhaps Nomination is inconsistent with full Responsible Government.

Proportional Representation.—It is obvious that devices like communal representation etc., can have no permanent place in a perfect franchise scheme. Though useful as transitional and preparatory measures they are bound to make room in course of time for more scientific methods of election which have been found useful in Western countries. The problem of the representation of the minorities is in no way peculiar to India. In advanced countries it has been successfully solved by ingenious methods of election. One of them—Proportional Representation—was strongly advocated by Dr. R. P. Paranjpye as well suited to Indian conditions. He rightly claimed that it would facilitate the progress of India towards Responsible Government by gradually obliterating communal differences. The Joint Committee accepted the suggestion and recommended that the method might be tried if the Local Council of a province passed a Resolution in favour of its adoption.

(75) ELECTORAL QUALIFICATIONS AND OTHER RULES FOR THE PROVINCIAL COUNCILS

Detailed rules were framed to define the qualification of voters for the different Provincial Councils and for the conduct of elections. They were first

published in the *Ga ette of India*. They have been arranged and explained in an excellent handy volume called *Electioneering in India* by the Honourable Mr Hammond of the Indian Civil Service.

It is unnecessary to reproduce them here. Their general nature will be gathered from the following summary.

In a *general urban constituency* the qualification is based upon (a) residence in that constituency for a period of time (which is not the same in the different provinces); (b) ownership or occupation of a house of which the minimum rental value or the capital value is prescribed. This value is not the same in all the provinces, and not even the same in a particular province. It is higher in the presidency towns than in the other larger towns in the province. (c) payment of Municipal taxes of which the minimum is prescribed; (d) assessment to income tax and (e) receipt of a military pension.

In a *general rural constituency*, the qualification is of a twofold nature due to the fact that the towns that have not been defined as separate *urban* constituencies have been merged in the rural constituencies. Therefore in the case of those who reside in such towns the qualification is based upon residence, ownership or occupation of houses, or payment of municipal taxes as in an urban constituency. The strictly rural qualification is based upon the holding of land as owner, occupant or tenant and paying a prescribed minimum land revenue to the state, or rent to the owner.

In a general constituency, it should be recalled, certain communities enjoy separate communal representation. In such cases, a person who has any of the qualifications mentioned above and belongs to

the particular community has the communal vote. It should be clearly understood that a person can have only *one* vote in a general constituency. The communal vote is not an additional vote.

Special Constituencies.—The qualifications have been already mentioned in a general way.

Explanatory Remarks.—With regard to qualification for voting it should be noted that the Joint Parliamentary Committee desired that the Franchise as settled by Rules under the Act should not be altered for the first ten years and that it should be outside the power of the Legislative Councils to make any alterations in it. The case of woman-suffrage where such a change has been allowed is to be regarded as exceptional and as not forming any precedent in respect of proposals for other alterations.

An elector to the Local Council must be a male British Subject, of sound mind, and over 21 years of age. The question as to whether the franchise should be extended to subjects of Native States was much discussed at the time and received favourable consideration at the hands of the Southborough Committee. But as some Local Governments were opposed to the enfranchisement of the subjects of the Native States, the question was left to the discretion of each Local Government. Not one of them has extended the privilege to them.

Similarly with regard to female suffrage, though there was an overwhelming case in its favour, the Joint Committee felt that the question went too deep into the social system and susceptibilities of India, and therefore, left it to be settled in accordance with the wishes of the Indians themselves as constitutionally expressed *i.e.*, by a recommendatory Resolution

in its favour in the Local Councils. That popular opinion in some Provinces is genuinely in favour of extending the franchise to women is clear from the fact that Resolutions in favour of removing the sex-disqualification were passed in Madras and Bombay, and also in the Legislative Assembly. But in some provinces *e.g.* Bengal, Bihar and Orissa, similar Resolutions failed.

Residence for a specified period of time *e.g.* one year in the constituency is required in the case of each elector.

It will be seen that the qualification for voting is based upon the possession of property as evidenced by the holding of land, occupation of house, payment of Municipal Taxes, Income Tax etc. The qualification is not the same for all the Provinces nor is it uniform throughout a Province. It is generally higher in the urban area than in rural area. Even in urban areas it is specially high in towns like Bombay and Karachi, and in rural areas specially low for poor districts like Ratnagiri and the Panch Mahals. But within a given constituency it is the same for all voters. The qualifications defined by the first Electoral Rules conferred the franchise upon about 5.3 million people out of a population of 247 millions. The property qualification must be pronounced as unduly high in a poor country like India.

Qualifications for Candidates.—A person is not eligible for election as a member of the Council if such person (a) is not a British Subject, (b) is a female, or (c) is already a member of the Council or of any other legislative body constituted under the Act, or (d) is dismissed or suspended from legal practice, (e) is of unsound mind, (f) is under 25 years of age,

(g) is an undischarged solvent, (h) is a discharged solvent with a certificate that his insolvency was caused by misfortune without any misconduct on his part.

Again a person against whom a conviction by criminal court involving a sentence of transportation, or imprisonment for a period of more than six months is subsisting, unless the offence of which he was convicted has been pardoned, is ineligible for five years from the date of expiration of the sentence.

In addition to these general qualifications a candidate is required to belong to the "special" constituency or, in the case of communal representation, to the community he proposes to represent. A further qualification of residence for six months within the constituency is required in some provinces.

Corrupt Practices.—Direct elections and low franchise open the door to all sorts of irregularities at the hands of candidates or their overzealous agents. Stringent rules have been drawn up to prevent such practices. Corrupt practices include bribery, undue influence, personation, publication of false statements etc. The best method of checking such practices is to have a proper scrutiny of election-expenditure of each candidate. The candidates are, therefore, required to keep a careful record of receipts and expenditure in connection with the election and submit it to the Returning Officer. As a further check over such practices the declarations of election expenses made by the candidates and lodged in the office of the Returning Officer, are open to inspection on payment of a prescribed fee. Conviction for a corrupt practice would disqualify a candidate from standing for election for five years from the date of conviction.

326 (76) GENERAL PROCEDURE IN A COUNCIL

Other Electoral Rules.—It is unnecessary to reproduce here the detailed rules made for the purpose of preparing the electoral roll, nomination of candidates, the holding of elections, and the publication of results etc. Nominations are made by a fixed date; they are officially scrutinized; the Collector is the Returning Officer for the District. The polling booths are scattered throughout the District and polling takes place on the same day throughout the District, and throughout the Presidency for the matter of that. Different days are fixed for urban and rural voting, and for Mahomedan and Non-Mahomedan voting. Votes are given by ballot and in person. In plural-member constituencies every candidate has as many votes as there are members to be elected though he may accumulate all of them upon any one candidate.

(76) GENERAL PROCEDURE IN A COUNCIL

If we throw a glance at a fully developed democratic body like the House of Commons we find that all matters relating to its composition, duration, methods of business, privileges, etc., are settled by itself. It has cost the House of Commons many a protracted struggle with the King and his Council before it succeeded in establishing the valuable privileges. In fact it is in the exercise of these inestimable privileges that its real sovereignty consists. Parliament does not derive the rights from any authority higher than itself, for it itself is the highest authority.

But there can be no comparison between the House of Commons "the Mother of Parliamentary Institutions" and an Indian Provincial Council. The latter is a creation of the former and can have, therefore, no inherent rights of its own.

Accordingly important matters with regard to the Councils have been laid down in the Act itself or in Rules made under the Act. The Rules are as much binding as the Act itself, for they were, in the first instance, framed by the Governor-General in Council with the sanction of the Secretary of State in Council and then approved by Parliament. They can not be repealed or altered by the Indian Legislature or by the Provincial legislature.

Such matters as are not provided for in the Rules are provided for by the Standing Orders. The first Standing Orders were made by the Governor-General in Council with the approval of the Secretary of State, but they can be amended by the Local Legislature.

Let us then visualize the procedure in the Council with the help of the relevant Sections 72-D (6) & (7) of the Act, the Rules made thereunder and the Standing Orders.

Duration of the Council.—The Act requires the Governor to fix the time and place of holding the sessions of the Council and he has the power to prorogue it. The normal life of a Council is three years though it may be dissolved sooner by the Governor. In that case he must call a fresh Council within six months of the dissolution of the old Council.

Presidency of the Councils.—In the old Councils the Head of the Administration *i. e.*, the Governor or Lieutenant-Governor was the President. This was quite in keeping with the historical fact that the Legislative Council was an expansion of the Executive Council. But the Councils have now become assemblies of legislator and their new role required a corresponding change in their Presidents. By the

Governor ceasing to be a member of the Legislative Council (though he has the right of addressing it and of requiring the attendance of members for the purpose), he has been withdrawn into a convenient Olympian height from which he can watch and control, so far as seems advisable or possible, the proceedings of the Legislature.

The Councils also have benefited by the absence of the Governor. The presence of the Head of the Province in the Council had a stifling influence upon the Honourable Members who then could not make full use of their none-too-wide powers of putting Questions or moving Resolutions. If, therefore, the Councils were to develop the freedom and dignity of Parliamentary bodies as in other countries, they had to be removed from the stunting influence of the presence of the Governor at their deliberations.

The Joint Committee considered carefully this question. They were of opinion that the Governor should not preside and they advised that, for a period of four years, the President should be appointed by the Governor. Wherever possible it would be a great advantage if some one could be found for this purpose who had had Parliamentary experience. The Legislative Council should itself elect a Deputy President, and at the end of four years the nominated President would disappear and the President and Deputy President would be elected by the Council. The Joint Committee attributed the greatest importance to this question of the Presidency of the Councils. "It will, in their opinion, conduce very greatly to the successful working of the new Councils if they are imbued from the commence-

ment with the spirit and conventions of Parliamentary procedure as devised in the Imperial Parliament."

At the commencement of each session of the Council is elected a panel of four chairmen any one of whom presides over the Council in the absence of the President or Deputy President. The President decides all points of order which may arise and his decision is final. He may even ask a member to withdraw from the Council if the member's conduct appeared to him to be grossly disorderly; or finally, he may *suspend* the sitting of the Council for a specified time in the case of grave disorder arising in the Council.

A *session* of the Council is *prorogued* by the Governor, and a *meeting* of the Council is *adjourned* by the person presiding. On the termination of a session by prorogation all pending notices of business lapse and fresh notices must be given for the next session. But Bills introduced in the Council are not dropped. They are carried over to the pending list of business of the next session and are taken up at the stage at which they were left in the preceding session. The effect of an adjournment is to suspend the transaction of current business.

Quorum and Voting.—A certain quorum is required in each Council. It is 30 in Madras, 25 in Bombay, Bengal, U. P. and B. & O., 20 in C. P., 15 in the Punjab and 12 in Assam. All questions are determined by a majority of votes of the members present. The President has and must exercise a casting vote in the case of an equality of votes. Votes are taken by voices or by division. The procedure is this: when the President states the question to be voted upon, those who are in favour of

it say 'aye' and those against, say 'no'. According to the apparent preponderance of the voices he declares whether the 'ayes' or 'noes' 'have it'. If the President's opinion is challenged a regular division of votes is taken, the 'ayes' and 'noes' going into separate 'lobbies' for the purpose.

Closure.—In all deliberative bodies there is some provision for cutting short protracted discussion and bringing the debate to a definite vote. This is usually done by applying for 'closure'. In the course of a debate any member may move 'that the question be now put' and unless it appears to the President that the request is an abuse of the Rules or Standing Orders or an infringement of the right of a reasonable debate the motion for closure is immediately put. If the motion is carried, the original motion to which the closure was applied is put to the vote of the Council without further discussion. Whether the request for putting the question should be granted has been left to the discretion of the President.

List of Business.—Much depends upon the way in which the time of the Council is allotted to the consideration of the the business before it—both official and non-official. It is a recognized principle that in this matter Government has a preponderating voice. In the Provincial Council, for instance, the Governor allots days for the business of non-official members and on those days their business has precedence. When non-official business has precedence, Bills have precedence over Motions to amend the Standing Orders, and the latter over Resolutions, though the President has the discretion of giving priority to any item of such business. It is the duty of the Secretary of the Council to prepare a List of Business that is

before the Council from day to day and to circulate the list as well as other papers to the members of the Council.

Language.—An indication of the truly representative character of the Councils which may contain members from rural areas and of the backward classes, is furnished by the permissive use of the vernaculars in them. As Mr. Curtis says "In India the official and political classes both incline to think as though the progress of India towards Responsible Government depended on training Indians to the work of Ministers, Legislators, and Officials. But it really depends upon training electorates to a real understanding of the questions at issue, and to a habit of recording conscious decisions upon them. Such training will not begin in any real sense except in so far as provincial business is transacted and discussed in a language the people at large understand."

(77) FUNCTIONS OF THE COUNCIL

Having considered so far the general procedure in the Council, let us next turn to its Functions. They can be conveniently grouped under four heads.

- | | |
|-------------------|--|
| (1) Interrogatory | (3) Legislative |
| (2) Deliberative | <div style="display: inline-block; vertical-align: middle;"> <div style="display: inline-block; vertical-align: middle;"> <div style="display: inline-block; vertical-align: middle;">(a) Resolutions</div> <div style="display: inline-block; vertical-align: middle;">(b) Motion for adjournment</div> </div> <div style="display: inline-block; vertical-align: middle; font-size: 3em; margin: 0 10px;">{</div> <div style="display: inline-block; vertical-align: middle;">(4) Financial</div> </div> |

(1) *Interpellations.*—The right of asking Questions was first conferred by the Act of 1892 and extended by the Act of 1909. But in the old Councils many Questions were disallowed and the information supplied was often of no value. This right of putting Questions is generally regarded as a useful check upon the vagaries of the Executive. If a member

wants an oral answer to a question he puts a star against the question when he gives notice of it. If a question is not starred, the answer to it is printed and placed before the Council. A supplementary question cannot arise in connection with answers to unstarred questions.

No Question can be asked in regard to the following subjects:—

(i) Any matter affecting the relations of His Majesty's Government or of the Government of India, or of the Governor or Governor-in-Council, with any foreign State.

(ii) Any matter affecting the relation of any of the foregoing authorities with any Prince or Chief under the suzerainty of His Majesty, or relating to the affairs of any such Prince or Chief, or to the administration of the territory of any such Prince or Chief.

(iii) Any matter which is under adjudication by a Court having jurisdiction in any part of His Majesty's dominions.

The President's decision on the point whether any question is or is not within the above restrictions is final. Any member may put a supplementary question for the purpose of elucidating any matter of fact regarding which an answer has been given. Ten clear days' notice is required for the asking of a Question. A period of one hour is made available for the asking and answering of Questions at the commencement of every meeting of the Council.

(2) *Deliberative Functions.*—(a) *Resolutions.*—The right of moving Resolutions was regarded, even in the old Councils, as a valuable means of bringing the policy of Government more in accord with popular

views and of ventilating popular grievances. Fifteen days' notice is required for a Resolution which must be clearly and precisely expressed and raise a definite issue. Amendments to a Resolution (for which a day's notice has been given) may be moved with the consent of the President. Every Resolution is in the form of specific recommendation addressed to the Government, and the same restrictions which apply to the subject matter of questions also apply to the resolutions.

It is important to understand why a Resolution cannot but be purely recommendatory in the present stage of the Councils. Even an all-powerful body like the House of Commons does not make use of Resolutions to control the Executive. It has other methods of doing it *e.g.*, a debate on the Address, interpellations, motions to adjourn, budget debates or, finally, motion of no confidence. The result of pressing a Resolution to division with a view to defeat Government would certainly lead, in England, to a change of Government. In India, however, we have, in the province, the Governor-in-Council who is irremovable by a popular vote. There is no constitutional means of making a Resolution binding upon him.

(b) *Motion for Adjournment.*—This was a new feature of the Councils. In parliamentary countries motion for adjournment is a means for raising debate upon a question of urgent public interest. It furnishes an occasion for criticising the act or omission of a Department of Government. The President must be first satisfied about the definiteness, urgency and public importance of the question to be discussed. The Standing Orders require that leave to make a

motion for adjournment for the purpose of discussing a resolution on a definite matter of urgent public importance must be asked after Questions and before the business of the day is entered upon. Leave will be given if more than thirty members are for it. In that case the motion is taken up at 4 p. m. or earlier (if the business of the Council terminates earlier) on that day. At the end of the debate the President puts the question "that the Council do now adjourn". If this motion is carried it amounts to a vote of censure on the Department whose action came up for discussion. If the debate does not terminate before 6 p. m. the question cannot be put and the matter is automatically dropped. The right to move motion for adjournment is subject to the following restrictions.

- (i) Not more than one such motion can be made at the same sitting.
- (ii) Not more than one matter can be discussed on the same motion, and the motion must be restricted to a specific matter of recent occurrence.
- (iii) The motion must not revive discussion on a matter which has been discussed in the same session.
- (iv) The motion must not anticipate matter which has been previously appointed for consideration, or with reference to which a notice for motion has been previously given.
- (v) The motion must not deal with matter on which a Resolution could not be moved.

(3) *Legislative Procedure*.—A Bill i.e. a project of law may be introduced either by Government or by a private member. A private member must give notice of 15 days if the Bill referred to a Transferred

Subject and of one month if it referred to a Reserved Subject, and submit along with the notice a copy of the Bill and a full statement of its objects and reasons. If the Bill requires under the Act the previous sanction of the Governor-General, a copy of such sanction must, also be attached to the notice. If leave to introduce the Bill is given by the Council, the Bill must, as soon as possible, be published in the Gazette, in English as well as in the vernaculars of the province. If it be a Government Bill the Governor may direct its publication together with its object and reasons, in the Gazette even though no motion has been previously made for leave to introduce it.

Every Bill must be read three times and if the motion for any reading is not carried, it is to be regarded as dropped and can not be reintroduced within a period of six months from the date of rejection.

At the *first reading* of the Bill the principle of the Bill and its general provisions may be discussed but no details can be discussed, nor can any amendments to the Bill be moved at this stage.

On the introduction of the Bill the mover may move for (i) the consideration of the Bill by the Council either at once or on some future day to be then appointed, or (ii) its reference to a Select Committee to be composed of such members of the Council as he may name in his motion or (iii) its circulation for the purpose of eliciting public opinion thereon.

A Select Committee is appointed for the consideration of a Bill. The mover of the Bill, Member in charge of the Department to which the Bill refers, and the Law Member are generally members of the Select Committee and in addition, there are others appointed by the House. The Committee goes through

the Bill clause by clause and may amend it if it thinks fit. It may hear expert evidence and representatives of special interests affected by the Bill. The Select Committee stage is an important stage of the Bill as the latter is in a very plastic form. The Committee must submit its report within two months of the reference of the Bill to it.

The report of the Committee is presented to the House by the member in charge of the Bill. No debate is allowed at this stage. The report and the Bill as amended must be published in the Gazette. The member in charge may move for (i) the consideration by the House of the Bill as reported by the Committee (ii) or its recirculation for the purpose of obtaining further opinion thereon or (iii) for its recommittal to the Select Committee with or without instructions to make particular changes in the Bill.

The Bill enters upon its *Second Reading* if the motion that the Bill as reported be taken into consideration is carried. At this stage any member may propose an amendment of the Bill. If a number of amendments are proposed they are taken in the order of the clauses of the Bill to which they refer. The President submits the Bill clause by clause and when the amendments relating to it have been dealt with, he puts the question 'that this clause (as amended) stand part of the Bill'.

When the Bill has been thus dealt with and if no amendments have been made the Bill may be read for the *third time* and passed at once. But if the Bill has been amended and a member objects and the President allows the objection then it cannot be read the third time at once. It must be brought in again on a subsequent day. At this stage only formal

or verbal amendments can be moved. After the third reading the Bill is said to have passed; it is then signed and certified by the President and submitted to the Governor by the Secretary of the Legislative Department for his assent.

Budget Procedure.—By the “Budget” is meant the statement of estimated revenue and expenditure of the financial year. We may distinguish four operations in connection with it. (1) Preparation of the budget; (2) the voting of the budget; (3) execution of the budget; (4) the enforcing of accountability.

(1) *Preparation of the Budget.*—As the financial year in India begins on the first of April, operations in connection with the budget have to begin as early as the preceding September. Various stages have to be gone through. Heads of Offices prepare estimates for expenditure which are then scrutinized by special controlling officers, by the Accountant’s Department, and then by the Finance Department. Any new items of expenditure are scrutinized by the Finance Committee of the Legislature. The estimates as now revised and corrected are then considered collectively by the Government, and finally submitted to the Legislature.

(2) *Voting of the Budget.*—The functions of the Council with respect to the Budget have been importantly enlarged under the Reforms. Formerly it could only hold a general discussion upon it or move Resolutions which were purely recommendatory. Now the Council votes upon the Budget item by item, as all Parliamentary bodies do. After the Budget has been presented to the Council by the Finance Member on the appointed day, it proceeds to deal with it in two stages: (a) general discussion, and (b) voting of

demands for grants. On a day appointed by the Governor subsequent to the day on which the Budget is presented, and for such time as the Governor has allotted for this purpose, the Council discusses the budget as a whole or any question of principle involved in it. At this stage no motion is moved, nor is the budget submitted to the vote of the Council. At the end of the discussion the Finance Member gives a general reply to the debate.

The second stage begins with the voting of grants. A separate demand is made in respect of the grant for each Department of Government. Demands affecting reserved and transferred subjects are shown separately. Each demand must contain, first, a statement of the total grant proposed and then a statement of the detailed estimates under each grant, divided into items. Not more than twelve days can be allotted by the Governor for the discussion of the demands and not more than two days for the discussion of a single grant.

The Council cannot make motions to increase or alter the destination of a grant. Only the Governor can do that. But the Council can move motions either to omit or reduce any grant or any item in the grant.

A demand for *excess grant* is presented to the Council if money has been spent on a service beyond the amount granted by the Council. Similarly a demand for *Supplementary grants* or additional grants is made if the money already granted falls insufficient. The Council must exercise great vigilance in passing such grants for they weaken its control over the budget. By a change in the Rules the Government were allowed to present an estimate for an additional

grant 'in respect of any demand to which the Council has previously refused its assent or the amount of which the Council has previously reduced.' This change in the Rule has practically nullified what control the Council had over the budget. Refusal or reduction of a grant becomes a farce if subsequently the amount is made good by a supplementary grant.

(78) COMMITTEES OF THE COUNCIL

Committee on Public Accounts.—Superior official control over the budget has been partially relaxed in order that there should be greater scope for control left to the Council. Voting upon the budget is a way of exercising some control. But as the budget discussion lasts only for a few days the Council ought to have some means of watching the financial doings of the Executive throughout the year and of getting rectified any irregularity in or departure from strict adherence to the budget arrangements that it might come across. For this purpose, in each Council, at the commencement of the financial year, a Committee on Public Accounts is appointed. Its object is "to deal with the Audit and Appropriation accounts of the Province and such matters as the Finance Department may refer to the Committee." Two-thirds of the Members of this Committee are appointed by the non-official members of the Council, the remaining being nominated by the Governor. The Finance Member is the Chairman of the Committee. It is the duty of the Committee to satisfy itself that the money *voted* by the Council was spent within the scope of the demand *granted* by the Council. It is also the duty of the Committee to bring to the notice of the Council every departure from the budget arrangement which

it may have detected or which the Finance Department may bring to its cognisance. The Committee on Public Accounts should be distinguished from the Standing Finance Committee which deals with *new* schemes of expenditure. The Finance Committee deals with *projects* of expenditure, the Committee on Public Accounts deals with expenditure *after* it has been incurred. It will be noted that only the accounts of the money *voted* by the Council are brought to the scrutiny of the Public Accounts Committee and not the whole expenditure of the Provincial Government.

Other Committees of the Council.—As it is impossible for the whole Council to attend to every business that comes before it, the practice has been established of appointing various Committees for various purposes. In this respect the Indian Councils are simply copying the methods adopted by Parliamentary bodies in the West. Reference has been made to two Committees: the Committee on Public Accounts and Select Committees appointed to consider Bills. A Select Committee may also be appointed to consider amendments to the Standing Orders of the Council.

Then there are various Standing Committees attached to the different Departments. The Joint Parliamentary Committee recommended: "It may greatly assist the political education of India if Standing Committees of the Legislative bodies are attached to certain Departments of Government." The suggestion has been extensively carried out in Bengal for in that province there are Standing Committees attached to the Police, Judicial and Jails, Local Self-Government, Medical and Public Health, Education, Commerce and Marine, Public Works

(Roads and Buildings), Irrigation, Agriculture, Excise and Land Revenue Departments. Each Standing Committee consists of the Member or Minister in charge of the Department and of four non-official Members. The latter are appointed by the Governor 'after consideration of the names of the persons' elected for the Committee by the Council. All major questions of departmental policy, all schemes involving large expenditure, annual departmental reports are brought before the Committee. Cases concerning appointments are not brought before the Committee. The Departmental Secretary acts as Secretary to the Committee and he explains the case to the Committee and takes part in the discussion. The powers of the Standing Committees are advisory only and their proceedings are confidential.

Council Secretaries.—By means of such Committees Members of Council are given opportunities to get an insight into the details of administration and the intricacies of Parliamentary procedure. Not only would such insight make their criticism at once sober and effective, but it would train at least some of them to fill with distinction the role of Ministers in course of time. S. 52 (4) provided another method of bringing this about. It gave the Governor the discretion of appointing from among the non-official Members of his Council, Council Secretaries who hold office during his pleasure and discharge such duties in assisting Members of the Executive Council and the Ministers as he may assign to them. The pay of the Council Secretaries, however, was to depend upon the vote of the Council. Their position was analogous to that of Parliamentary Under-Secretaries in England. But this power was not much used in practice. Only

in two or three provinces *e.g.*, Madras, Central Provinces, and the Punjab, it would seem, such appointments were made. Perhaps the association of such non-official members with administration is not quite easy during the present transitional period.

(79) SPECIAL POWERS OF THE GOVERNOR WITH REGARD TO LEGISLATION AND THE BUDGET

In describing the functions of the Council we dealt with the normal course of legislation and the voting of grants. But difficulty may arise with regard to both as the Governor has to face a Council with an elected majority. Let us therefore consider the special powers with which the Governor has been armed to get over the difficulties just mentioned.

Powers in the matter of Legislation.—Here his powers are both positive and negative and have reference to essential and non-essential legislation.

Essential Legislation.—In as much as the Governor is responsible to Parliament for the reserved half he must have adequate power to secure the necessary legislation. As the Councils have been greatly enlarged and as they contain a substantial elective majority every Government Bill may not pass. The M. C. Report discussed various alternatives for securing "essential" legislation and in the end it recommended the use of a "Grand Committee." If a Bill failed to pass in the Council, and if the Governor thought the Bill "essential" then he was to refer it to the Grand Committee of the Council which was so composed as to have a majority of *nominated* members and which, therefore, would not oppose the Bill. But this proposal as to Grand Committee was totally rejected by the Joint Parliamentary Committee. They did

so because, in their opinion, the Grand Committee did not give the Governor the power of securing legislation in a crisis in respect of those matters for which he is held responsible, and because, in respect of ordinary legislation about Reserved subjects, it perpetuated the system of securing legislation by what is known as the "official bloc" which was the cause of great friction and heartburning in the Morley-Minto Councils. "The responsibility for legislation on Reserved Subjects is with the Governor-in-Council, and when the official bloc has been put into operation, it has been put into operation by him, and is merely an indirect way of asserting his responsibility. The Committee think it much better that there should be no attempt to conceal the fact that the responsibility is with the Governor-in-Council, and they recommend a process by which the Governor should be empowered to pass an Act in respect of any reserved subject, if he considers that the Act is necessary for the proper fulfilment of his responsibility to Parliament. He should not do so until he has given every opportunity for the matter to be thoroughly discussed in the Legislative Council, and as a sensible man he should, of course, endeavour to carry the Legislative Council with him in the matter by the strength of his case. But, if he finds that that cannot be so, then he should have the power to proceed on his own responsibility."

Effect has been given to this recommendation of the Joint Committee by 72-E which declares a Bill (rejected by the Council) to have passed on the Governor certifying "that the passage of the Bill is essential for the discharge of his responsibility for the subject."

As a safeguard against the abuse of this affirmative power of legislation, every such Act has to be reserved, an authentic copy being sent to him, by the Governor-General for the signification of His Majesty's pleasure, who may be advised by the Secretary of State, and the Act has to be laid before both Houses of Parliament. Provision has been made in the Act, however, for the avoidance of delay in case of a grave emergency by giving the Governor-General power to assent to the Act without reserving it, though this, of course, does not prevent subsequent disallowance by His Majesty in Council.

Non-essential Legislation.—To turn next to the Governor's powers with regard to non-essential legislation. Relaxation of "previous sanction" will encourage the introduction of many Bills in the Council and they may be amended in manner which the Governor may not approve. In such cases, power of certification has been given to the Governor under 72-D (5) which should be carefully distinguished from the certification procedure of affirmative legislation mentioned above. In the former case a Bill or any clause or amendment thereof (introduced but not passed) certified by the Governor as affecting "the safety or tranquillity of his province, or any part of it or of another province" cannot be proceeded with.

A Bill may be not only introduced in the Council but passed by it. Then the Governor has either to assent to it or veto it. A frequent use of the veto power is undesirable. The Governor can resort to an intermediate procedure of Return and Reservation—under S. 81 A. (a). He may return such a Bill for reconsideration with any amendments that he may

recommend or, (b) he may reserve the Bill for the consideration of the Governor-General. Reservation is either compulsory or optional according to rules mentioned below. (c) Within six months of such reservation the Governor may again return the Bill for further reconsideration, with the consent of the Governor-General. A Bill thus reaffirmed with or without amendments, may be again presented to the Governor; (d) If a Bill, reserved for the consideration of the Governor-General, is not assented to by him within six months, it lapses, unless it has been, in the meanwhile, returned to the Council for reconsideration.

Reservation is *compulsory* for Bills (not previously sanctioned by the Governor, but passed by the Council) containing provisions (a) affecting the religion or religious rites of any class of British Subjects in British India; (b) regulating the constitution or functions of any University; (c) having the effect of including within a Transferred subject matters which have hitherto been classified as Reserved subjects; (d) providing for the construction or management of light or feeder railways or tramways; (e) affecting the land-revenue of a province in the matter of period of settlement, or pitch of assessment or modifying materially the general principles of land-revenue assessment. Reservation is *optional* in the case of a Bill which appears to the Governor (a) to affect any matter wherein he is specially charged under his Instrument of Instructions, (b) to affect any central subject, or (c) to affect the interests of another province.

A Bill after it has been assented to by the Governor and presented to the Governor-General for

his assent or veto, may be reserved by the Governor General for the signification of His Majesty's pleasure.

The procedure of Reservation enables the Governor to ascertain the views of the Governor General on important legislative projects, and the Governor-General also has the opportunity of examining the Bill at an intermediate stage.

The following Table will help the student in understanding the various stages at which the Governor can deal with the career of a Bill.

<i>Before Introduction of a Bill:—</i>	1 Previous Sanction §80 A (c). 2 Certification under 72 E (1).
<i>Before Passage by Council.</i>	1 Certification 72 D (5). 2 „ 72 E (1).
<i>Before Assent by the Governor.</i>	1 Return for reconsideration 81 A. 2 Reservation to the G. G. (compulsory or optional.) 81 A-2. 3 Return after reservation 81 A (2) a. 4 Veto by the Governor.
<i>Before Assent by the G. G.</i>	1 Reservation for H. M's signification 72 E (2). 2 Veto by the G. G. 81 A (3).

Powers in the matter of the Budget.—The procedure of the voting of demands by a popular Council may give rise to difficulties and precautions have been taken to get over them. (a) In the first place certain charges of a special or recurring character mentioned in Section 72 D (3) e.g., provincial contributions,

interest and sinking fund charges, salaries of officers appointed by the Secretary of State, Judges etc. are exempt from submission to the vote of the Council. (b) The Governor has the power to authorize such expenditure as may be in his opinion necessary for the safety or tranquillity of his province. (c) Finally, in the case of a grant refused or reduced by the Council, the Governor has the power of restoring it. If the grant related to Reserved Subjects, and if it is reduced or not assented to by the Council, and if the Governor certifies "that the expenditure provided for by the demand is essential to the discharge of his responsibility for the subject" he can restore it. The Joint Committee made it perfectly clear that this power of restoration was real and its exercise should not be regarded as unusual or arbitrary. "Unless the Governor has the right to secure supply for those services for which he remains responsible to Parliament, that responsibility cannot justly be fastened upon him." If the grant related to Transferred Subjects, and if it was reduced or refused by the Council, the Governor, if he was so advised by the Ministers, would be justified in re-submitting the demand to the Council for a review of their former decision. Generally of course the opinion of the Council in the matter of transferred expenditure will be much more decisive than that regarding Reserved Subjects. (d) With regard to Transferred Subjects the Governor has the right, in cases of emergency to authorize such expenditure as may in his opinion be necessary for the carrying on of any Department.

Cases of the restoration of grants that were either refused or reduced by the Councils were not rare.

CHAPTER XVI

RESPONSIBILITY TO PARLIAMENT

(80) GOVERNMENT OF INDIA RESPONSIBLE TO PARLIAMENT

Having dealt with the operation of Dyarchy in the Provinces, let us pass on to the Reforms in the Central Government. The Government of India and the Secretary of State are still responsible to Parliament for their administration. Their essential responsibility to Parliament and not to the Indian Electorates is the key-note of the changes—or of the absence of change—in the Government of India and the Secretary of State in Council. All modifications (or their absence) in the old order can be shown to be implicit in this fundamental principle of responsibility to Parliament.

The reason for this cautious policy was mentioned in the Third Formula in the M. C. Report and was thus enlarged upon by the Joint Committee: "The problem enunciated by the Announcement of 20th August 1917 was to design the first stage in a measured progress towards Responsible Government. Any such stage, if it is to be real advance, must, as the Committee conceive it, involve the creation of an electorate, and the bestowal of some share in the work and responsibilities of Government on those whom the electorate chooses to represent its interests. In the present circumstances of India, the electorate must at the outset be small and the administrative experience of its representatives must be limited. Before,

therefore, the policy of His Majesty's Government can be fulfilled, the electorate must grow and practical experience in the conduct of public affairs be enlarged. During this period the guardianship of the peace of India cannot be withdrawn from the care of the official agency which Parliament at present charges with the duties of the administration, and the Committee regard it as an essential feature of the policy of His Majesty's Government that, except in so far as he is released from responsibility by the changes made under this Bill, the Governor-General in Council should remain in undisturbed responsibility to Parliament and fully equipped with the necessary powers to fulfil that responsibility.

But from the beginning the people must be given an opportunity, and all political wisdom points to its being a generous opportunity, of learning the actual business of government and of showing, by their conduct of it, to some future Parliament that the time has come for further extension of power."

(81) THE EXECUTIVE COUNCIL OF THE G. G.

We considered in an earlier section (§ 45) the strength and working of the Executive Council of the Governor-General before the Reforms. It consisted of six ordinary Members and one extraordinary Member. On account of the growth of centralization a host of officials worked under the Members of the Council. The phalanx of Secretaries, Joint Secretaries, Additional Joint Secretaries, Deputy Secretaries, Additional Deputy Secretaries, Under-Secretaries &c., of each Department had added enormously to the size of the Imperial Secretariat. Some reductions were made as a result of the process

of Provincial Devolution, and a redistribution of Departments also was thought necessary. As the Montagu-Chelmsford Report indicated* "The changed relations of the Government of India with Provincial Governments will in themselves materially affect the volume of work coming before the Departments, and for this reason alone some redistribution will be necessary. We would therefore abolish such statutory restrictions as now exist in respect of the appointment of members of the Governor-General's Council so as to give greater elasticity both in respect of the size of the Government and the distribution of work". The Report also recommended the appointment of one more Indian to the Executive Council. The Joint Select Committee of Parliament accordingly recommended that the limitation in the strength of the Executive Council should be removed, that only three of them should have service qualifications and that the legal qualifications required for the fourth member may be gained in India as well as in the United Kingdom and that not less than three members of the Council should be Indian. The change in legal qualification meant that eminent Indian pleaders and Advocates would become eligible for appointment; also with the progressive Indianization of the Civil Service, the members of the Council drawn from the ranks of public servants will more and more likely be of Indian rather than of European extraction.

One of the last official acts of Lord Chelmsford was the preparation of a scheme for redistributing the Departments in the Government of India. It was given effect to, with modifications, by his successor,

* Report : para 271.

Lord Reading by an order dated April 11, 1923. There are at present nine Departments.

- (i) Foreign and Political, (ii) Railways and Commerce, (iii) Industries and Labour, (iv) Education, Health and Lands, (v) Army, (vi) Home, (vii) Legislative, (viii) Finance and (ix) Ecclesiastical.

The distinction between ordinary and extraordinary members has been abolished and at present there are seven members of the Council. As the Viceroy manages the Foreign and Political Department and as the Ecclesiastical Department has been tacked on to the Railways and Commerce Department, each of the remaining six Departments is entrusted to a Member.

An account has already been given of the method of business in each Department. A few more particulars are added to show how the classification of subjects into Central and Provincial and the introduction of the Reforms generally have affected the old practice. There has been no change in the *Foreign and Political Department*. It continues under the Viceroy and is the most important and laborious of all Departments. As for the *Army Department*, reference has been made to the view of Lord Curzon that the Army Department should be represented on the Council by a Civilian. That view was not accepted then; nor was it endorsed by the Army in India Committee (also known as the Esher Committee). It continued the existing arrangement under which the Commander-in-Chief has a dual capacity; he is at the head of the Army and represents the Department in the Executive Council. The Army Department transacts all business connected with the adminis-

tration of the Army, the formulation and execution of the military policy of the Government of India the responsibility for maintaining every branch of the Army, combatant and non-combatant, in a state of efficiency and the supreme direction of any operations based upon India. It is also concerned with the administration of the Royal Indian Marine and the Royal Air Force in India.

The Executive Council has a general control over the Army Department as it has over other Departments. But as in the last resort the Secretary of State for India and His Majesty's Government are liable for the protection of India in an emergency, special responsibility attaches to them with regard to the military administration. For this purpose the Secretary of State for India has a Military Secretary recruited from the Indian Army and there is also a Military Member on his India Council.

The Commander-in-Chief has a Secretary who is a Civilian and who has access to the Viceroy like other Secretaries. He represents the Army in that Chamber of the Indian Legislature of which the Commander-in-Chief does not happen to be a Member. The Commander-in-Chief has a Military Council for purposes of consultation and advice.

The Home Department deals with all business connected with the internal administration of British India. As most of the subjects dealt with by this Department are under the administration of Provincial Governments, the work of this Department is that of supervision, direction and control. The *Legislative Department* prepares the drafts of all Bills introduced in either Chamber of the Indian Legislature, assists other Departments with legal advice and examines

Bills in the Provincial Councils when referred to it and scrutinizes all Acts of the Provincial Councils. The Department of *Railways and Commerce* deals with railways, shipping, tariffs, statistics, life-insurance etc.

The *Department of Industries and Labour* is concerned with labour legislation, interprovincial migration, Factories Act, International Labour Organization, Petroleum and Explosives Act, patents designs and copyrights, steamboiler and electricity legislation stores, geology and minerals, printing and stationery, civil aviation, meteorology, development of industries (Central), Posts and Telegraphs, Public Works and Irrigation. The *Department of Education, Health and Lands* deals with education, land revenue, civil veterinary, agriculture, forests, central research on above subjects, botanical survey, famine, control of food stuffs, external emigration, Survey of India, Medical services and Public Health, Zoology, Local Self-Government, libraries and records, archæology and Museums. The *Finance Department* is concerned with the administration of Central finance; with some supervision of provincial finance; with questions relating to the salaries, leave and pensions of public servants, audit and accounts, currency, banking, exchange, Mints and the Public Debt of India. A separate branch of this Department, known as the Military Finance Department, deals with all matters relating to Military Finance. Subjects like customs, salt, opium, excise and stamps are administered by a Board of Central Revenue working as a branch of this Department.

Nothing needs to be added to what has been said in §§ 45-48 regarding the nature of the Executive Council and the position of the Viceroy and Governor-

General in it. No change has taken place in it as a result of the Reforms except the introduction of two more Indians into it. The Members are in no sense responsible to the Indian Legislature to the composition and functions of which Body we turn in the following section.

(82) THE INDIAN LEGISLATURE

Under the Reforms of Lord Morley the Governor-General's Council was so constituted in its executive and legislative character "as to ensure its constant and uninterrupted power to fulfil the constitutional obligations that it owes and must always owe to His Majesty's Government and to Imperial Parliament." This meant an official majority in the Indian Legislative Council. But the experience of the disadvantages of an official majority was so patent that the authors of the M. C. Report came to the definite conclusion that no Council, the composition of which was conditioned by the necessity of maintaining an official majority, would possibly be truly representative of the interests of the entire country. On the other hand, the institution of an assembly with a large elected majority raised the question of enabling the executive government to secure essential legislation and supplies. How to secure these conflicting objects was the problem which the authors of the Reforms Scheme had to solve. They rejected the suggestion of setting up a Grand Committee in the Assembly, and finally hit upon a *bicameral* legislature for British India. In most Western countries the legislatures have two Chambers—the Upper and the Lower—and there are great advantages in having two Houses. A better representation of all the interests in the country—

particularly those of capital, land, nobility of birth etc.—is secured, and the Upper Chamber serves the additional useful purpose of being a 'brake' upon hasty or erratic legislation in the Lower or democratic House.

The M. C. Report, therefore, recommended that there should be two Chambers in the Indian Legislature—The Indian Legislative Assembly as the Lower Chamber and the Council of State as the Upper Chamber. But the M. C. Report did not propose to give to the Council of State the full status of an Upper Chamber. "We do not propose to institute a complete bicameral system, but to create a Second Chamber, known as the Council of State, which shall take its part in ordinary legislative business and shall be the final legislative authority in matters which the Government regards as essential."* Thus the Council of State was to be merely a Chamber that could be brought into effective play for the purpose of passing, on the strength of its official majority, what the Government of India thought to be essential legislation. It was to play the kind of part which the proposed "Grand Committee" was to play in the Provincial Council. Now we have already examined the considerations that led to the rejection of the Grand-Committee procedure in the Local Councils. The same considerations prompted the Joint Committee to oppose the idea of using the Council of State for securing, on the strength of its official majority, essential legislation.

If not a Grand Committee, what then was to be the status of the Council of State in relation to the Legislative Assembly? To answer this question we

* M. C. Report : para 277.

must first of all consider the nature and extent of control which the Secretary of State will continue to exercise over the Government of India. It is obvious that if the principle of responsibility to Parliament was to be narrowly interpreted then the problem of the composition of the Indian Legislature loses half its difficulty and importance. That Legislature cannot be anything more than a mere recommending and registering body, and to the extent to which the Legislative Assembly was made stronger and more elective, to that extent the Council of State was required to be made a narrow and official Body as a counterpoise to it. But if the Government of India were to enjoy as large a measure of independence as was yet compatible with their responsibility to Parliament then the Indian Legislature may occupy an important and unique place under the Reformed regime and the Council of State need not be in that case a mere glorified Grand Committee. Accordingly the official majority has been dispensed with in the Council of State though, of course, care has been taken to see that the forces that make for conservatism are far stronger in the Council of State than they are in the Legislative Assembly. In most matters the powers of the Council of State are co-ordinate with those of the Assembly. The Council of State is to be a true Second Chamber, its useful function consisting in compelling the Assembly to bestow more reflection and care upon legislative measures. For this purpose it was to be so formed as to secure the services of the best men and as to be invested with all the dignity and position of "a body of elder statesmen." It has been also described as a "correcting" Chamber.

Composition of the Council of State.—The M. C. Report

proposed that the Council should consist of 50 members with an official majority. But in order to be a true Second Chamber its strength has been increased and the official majority has been dispensed with. It is to consist of 60 members as a maximum, of whom not more than twenty are to be Officials, and at least thirty must be elected members. (§ 63 A of the Act).

Composition of the Assembly.—The principles upon which the Lower Chamber of the Indian Legislature was to be formed were soon recognised. It was to be representative of the people throughout British India, with a substantial elective majority. Its members were always to bring an all-India point-of-view to bear upon all problems that came before it for consideration. Provincial or parochial narrowness and communal jealousies were out of place in that Chamber which is to be the symbol of the unity of the Indian nation.

The Act (§ 63 B) laid down 140 as the minimum strength of the Assembly. This number may be increased by Rules made under the Act, provided at least $\frac{5}{7}$ of the members are elected members, and at least $\frac{1}{3}$ of the other (*i. e.*, nominated) members are non-officials. As a matter of fact the actual strength of the Assembly is 143. The compositions of the two Chambers are given in the two following tables.

Statement showing the Constitution of the Council of State, (excluding the President)

	NOMINATED MEMBERS.			ELECTED MEMBERS					Grand Total
	Officials	Non-officials	Total	General	Muslim	Sikh	European Commerce	Total	
Government of India	12	...	12	...	...	...	...	...	12
Madras	1	1	2	4	1	...	...	5	7
Bombay	1	1	2	3	2	...	1	6	8
Bengal	1	1	2	3	2	...	1	7	8
United Provinces	1	1	2	3	2	...	...	6	8
Punjab ...	1	2	3	1	1 $\frac{1}{2}$	1	...	5 $\frac{1}{2}$	7
Bihar and Orissa	1	...	1	2 $\frac{1}{2}$	1	...	...	3 $\frac{1}{2}$	6 $\frac{1}{2}$
Burma	...	...	...	1	...	...	1	2	7
Central Provinces	...	...	...	2	...	...	...	2	2
Assam	...	...	...	1 $\frac{1}{2}$	...	...	...	1	2
Delhi	1	...	1	...	...	...	...	1	1
TOTAL	19	6	25	20	10	1	3	34	59

Statement showing the Constitution of the Legislative Assembly, (excluding the President)

	NOMINATED MEMBERS.			ELECTED MEMBERS.							REMARKS
	Officials	Non-officials	Total	General	Muslim	Sikh	Land owners	Europeans	Indian Commerce	Total	
Govt. of India	12	...	12	...	...	...	...	...	...	...	12
Madras	...	4	4	10	3	...	...	1	1	16	20
Bombay	2	4	6	7	4	...	1	2	2	16	22
Bengal	2	3	5	6	6	...	1	3	1	17	22
United Provinces	2	1	3	8	9	...	1	1	...	16	19
Punjab	1	1	2	3	6	2	1	...	...	12	14
Bihar and Orissa	1	1	2	8	3	...	1	...	...	12	14
Central Provinces...	1	...	1	3	1	...	1	...	...	5	6
Assam	1	...	1	2	1	...	...	1	...	4	5
Burma	1	...	1	3	...	...	...	1	...	4	5
Berar	...	2	2	...	...	...	...	...	...	...	2
Ajmere	...	1	1	...	...	...	...	...	...	...	1
Delhi	...	...	...	1	...	...	...	...	...	1	1
TOTAL	25	15	40	51	30	2	7	9	4	103	143